

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- - - - -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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HEARING re Motion of the Debtors for Entry of Order Pursuant to
11 U.S.C. § 363(b) Authorizing and Approving Settlement
Agreements with Certain Unions

HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§
105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002,
4001 and 6004 to Amend DIP Credit Facility

HEARING re Continuation of GM 363 Sale Hearing

Transcribed by: Lisa Bar-Leib

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2 THE COURT: Good morning, folks.

3 MR. MILLER: Good morning.

4 THE COURT: Have seats, everybody. Come on up,
5 please.

6 MR. WEISS: Good morning, Your Honor. Robert Weiss
7 of Honigman Miller Schwartz & Cohen, special counsel for
8 General Motors Corporation.

9 THE COURT: Right, Mr. Weiss.

10 MR. WEISS: When we ended last evening, I indicated
11 that we had arrived upon a stipulation order resolving
12 objection to sale motion with regard to GECC and some equipment
13 leases that are critical to the sale of the company should it
14 proceed based upon this Court's order.

15 I'm pleased to advise the Court that we have come to
16 a final resolution in the form of a stipulation and order
17 resolving objection to sale motion. We have consulted with
18 counsel for the creditors' committee whose input is
19 incorporated within the final terms of the stipulation.

20 Your Honor, just very briefly, if I may, the subject
21 of the leases are very substantial equipment for both
22 manufacturing and assembly that's included in a number of
23 different General Motors facilities. The stipulation is only
24 effective if the Court approves the sale and the sale closes.
25 In that period of time, the debtor has not yet elected whether

1 it will assume or reject these leases. This stipulation
2 permits the use of this equipment post closing in the period
3 before a decision is made as to whether to assume and assign or
4 reject these leases. All rights and interests of the parties
5 are protected and we believe that this is a stipulation that is
6 very much in the interest of both constituents. I would ask
7 that the Court approve it.

8 THE COURT: Okay, Mr. Weiss. Anybody else want to
9 comment? Mr. Schmidt, creditors' committee?

10 MR. SCHMIDT: Good morning, Your Honor. Robert
11 Schmidt, Kramer Levin, on behalf of the committee. Your Honor,
12 Mr. Weiss presented the stip to me a little while ago. He's
13 represented that one of my colleagues has signed off on it. I
14 have no reason to not believe that but I just want to take a
15 quick look at it and we'll advise the Court at a break.

16 THE COURT: I'm going to be tied up for the next hour
17 or two --

18 MR. SCHMIDT: I suspect we'll have plenty of time to
19 read it.

20 THE COURT: Fair enough. Mr. Weiss, would it be
21 helpful more than just that? Would it be necessary -- would
22 you like an order entered on that today assuming the creditors'
23 committee is so (indiscernible)?

24 MR. WEISS: Yes, we would, Your Honor. And I can
25 represent to the Court that, as Mr. Bacon can attest to, we had

1 a number of different conversations with Adam Rogoff. And he
2 has, in fact, signed off on the stipulation in the form in
3 which we're going to present it.

4 MR. BACON: And by email as well.

5 THE COURT: Sure. The practical problem that a lot
6 of parties are having in this case is that this is a
7 complicated case. You can't do it with one lawyer. And people
8 have to kind of have enough time to talk to each other when
9 they're so busy on other things.

10 MR. WEISS: Sure.

11 THE COURT: So that's fine. Mr. Schmidt, could I
12 simply ask you if either you or Mr. Rogoff or somebody
13 communicate with my chambers perhaps by lunchtime just to give
14 me comfort that you guys are okay with it?

15 MR. SCHMIDT: Absolutely, Your Honor.

16 THE COURT: Thank you. Thank you.

17 MR. WEISS: Your Honor, shall I --

18 THE COURT: Yes, Mr. Weiss?

19 MR. WEISS: Would you like me to present to the Court
20 a copy of the stip and order at this time?

21 THE COURT: Well, actually, giving it to me is not
22 going to be that helpful right now. So, yeah, you can give it
23 to me but I won't really be able to look at it until next
24 recess at the earliest or maybe after we're done today.

25 MR. WEISS: May I approach the bench?

1 THE COURT: Oh, sure. Sure. Thank you.

2 MR. WEISS: So just so I understand, assuming that
3 the creditors' committee confirms that the form of the order is
4 satisfactory to them, we need to appear before the Court again
5 on this matter?

6 THE COURT: I wouldn't think you need to.

7 MR. WEISS: Okay. Thank you, Your Honor.

8 MR. SCHMIDT: Thank you, Your Honor.

9 THE COURT: Thank you. Do we have other housekeeping
10 matters before -- yes?

11 MR. WARREN: Good morning, Your Honor. Irwin Warren,
12 Weil Gotshal & Manges, for the debtors. Two housekeeping
13 matters. On the record yesterday, I believe it was, there was
14 discussion about provisions of the loan security agreement
15 between the Treasury and the debtors, in particular with
16 respect to the question of what collateral did or did not have
17 liens. Going to Mr. Parker's question, we advised the Court we
18 would provide a letter with the relevant sections. And if I
19 may hand that up to Your Honor, we have done that. We've
20 provided it to Mr. Parker and to all other counsel for the
21 objectors. The particularly important provision is the
22 exclusion of collateral which is in here and the definition of
23 excluded collateral basically says it's any property to the
24 extent that the grant of a lien on it would give rise to a lien
25 under any other document. So it's sort of elegant in its

1 simplicity of addressing the question of whether a lien has
2 been granted. If it would grant a lien and it would have done
3 what Mr. Parker says, the government doesn't have it.

4 If I may hand up that letter?

5 THE COURT: Yes, Mr. Warren. Thank you.

6 MR. WARREN: The second housekeeping matter, Your
7 Honor, is Mr. Bressler had indicated that rather than putting a
8 witness on for certain of the questioning, he would designate
9 certain testimony from the depositions and Your Honor had said
10 we should counter designate by this morning. The IUE also
11 chose to designate not just with respect to Mr. Henderson but
12 with respect to Mr. Raleigh. We have put together our counter
13 designations. Those will be filed but Your Honor had asked
14 that marked copies of the transcripts be provided color-coded
15 to indicate who are the objectors.

16 THE COURT: I say color coded. I simply meant so
17 that I could tell whose is what.

18 MR. WARREN: We figured the easiest --

19 THE COURT: Black and white, that's equally
20 satisfactory.

21 MR. WARREN: We thought color might work. We have
22 taken the liberty of taking all of the objectors designations
23 and put them in yellow. Ours are in pink. And if I may hand
24 those up to Your Honor, these are the Henderson and Raleigh
25 transcripts. Hopefully, this will be of assistance.

1 THE COURT: Okay. And I assume all of your opponents
2 also have.

3 MR. WARREN: Yes. They all have been provided copies
4 and they'll have the designations which are filed. Thank you,
5 Your Honor.

6 THE COURT: Thank you, Mr. Warren.

7 MR. JONES: Sorry, Your Honor. Very quickly. David
8 Jones.

9 THE COURT: Mr. Jones?

10 MR. JONES: Let me note that on the Wilson
11 designations, we're in the process of doing the same thing. We
12 don't have it in hand yet. The designations are filed and
13 we'll provide it as soon as possible.

14 THE COURT: Okay.

15 MR. LEHANE: Good morning, Your Honor. Robert
16 LeHane, Kelly Drye & Warren, on behalf of the debtors' landlord
17 and its Roanoke, Texas distribution facility.

18 THE COURT: Good morning, Mr. LeHane.

19 MR. LEHANE: Your Honor, we filed a limited objection
20 that raised three issues: cure, adequate assurance and the
21 debtors' ability to remain in the premises prior to a
22 designation of the lease. The parties have, we believe,
23 arrived at a business decision, a business settlement. There's
24 a lease amendment that has yet to be executed. But the
25 settlement involves the debtor confirming for the record, one

1 of the issues raised in the adequate assurance objection. Your
2 Honor, the debtors agreed to assume the lease and assume the
3 lease at closing and that in connection with the assumption of
4 the lease, the debtor agrees that it will assume all of the
5 obligations to indemnify the landlord whether or not those
6 relate to incidents that may have occurred pre-closing or pre-
7 petition. The debtors also agreed to pay all tax obligations
8 under the lease. Specifically, in Texas, the real estate taxes
9 are billed at the end of the year and they may relate to
10 periods pre-petition and pre-closing and the debtors agreed
11 that it would confirm for the record that it has agreed to
12 assume all of those obligations. If debtors' counsel would
13 simply confirm that for the record, we can --

14 THE COURT: Okay. Anybody have any problems with
15 what Mr. LeHane said. Mr. Smolinsky?

16 MR. SMOLINSKY: Good morning, Your Honor. Joe
17 Smolinsky, Weil Gotshal & Manges for the debtors. Your Honor,
18 we have a number of contract resolutions, of cure disputes,
19 that are on the calendar today. We were hoping to do it in a
20 streamline fashion, so as not to cause a stampede, one at a
21 time. We are in the process of working out with LBA the terms
22 of a modified lease amendment. I think the statements that
23 were made are accurate to the extent that there's an unknown
24 indemnity event that occurs prior to closing that that -- to
25 the extent it's covered any indemnity agreement under the

1 lease, the purchaser is assuming that liability.

2 I didn't want to upset the flow of this hearing
3 today. And to the extent that we want to deal with these
4 issues now or deal with them later, we can.

5 THE COURT: You know, you're reading my mind, Mr.
6 Smolinsky. And, frankly, I didn't know what Mr. LeHane was
7 coming up to say. That's fine, Mr. LeHane. I think you've got
8 it done, though. But, folks, what we have here now, which is
9 what appears to be a line of people who want to get up on
10 relatively minor matters, important to you all, of course, but
11 smaller in the scheme of things, it raises the risk of really
12 spiraling out of control and undercutting, if not undoing,
13 everything I've been trying to accomplish in the last couple of
14 days in terms of triaging these matters and dealing with the
15 most important issues first.

16 Unless there are any other things of major
17 importance, such as modifying any of the arguments that I've
18 already heard, I'm going to ask all of the people who are on
19 line to speak to sit down until I can hear from Mr. Richman and
20 Mr. Parker and reply by the movants. And then rest assured
21 that before I leave today, we will have dealt with everybody.
22 Okay, folks.

23 MR. SMOLINSKY: And, Your Honor, I think I could
24 later present a streamlined approach to the cure objections so
25 that we can make sure we cover everybody's concerns in the

1 fastest possible way.

2 THE COURT: Sure. Thank you, Mr. Smolinsky.

3 MR. SMOLINSKY: Thank you.

4 THE COURT: All right. Mr. Richman, I think you're
5 up.

6 MR. RICHMAN: Good morning, Your Honor. Your Honor,
7 Michael Richman, Patton Boggs, for the unofficial committee of
8 family and dissident GM bondholders. Your Honor, our principal
9 argument, which I'm going to focus on this morning, is that the
10 debtors have not satisfied their burdens to demonstrate the
11 right to use Section 363 to effectuate a sale of substantially
12 all their assets in the first month of the case.

13 After the briefing and the evidence, a related and
14 central question that seems to be unique to this case is where
15 the government seeks to rescue a failing company through a
16 corporate restructuring under Chapter 11 of the Bankruptcy Code
17 may have circumvent the Code's various creditors' rights and
18 protections by labeling its restructuring a sale and then
19 conditioning its rescue on a quick sale to itself.

20 We understand the argument that but for the
21 government's rescue effort, we and many other stakeholders
22 would have nothing. And so, we should be grateful for
23 receiving anything. But that is not the way that bondholders
24 and other creditors and stakeholders look at what is being
25 proposed. Instead they ask why is a financial rescue under

1 Chapter 11 not according equal and ratable treatment to
2 different groups of claimants whose claims are legally similar.
3 They do not understand how our legal system can permit the
4 government to resort to Chapter 11 and yet choose to favor some
5 constituencies over others.

6 The government's answer is that it is purchasing the
7 best assets under Section 363. So it has the right to take
8 what it wants, leave what it doesn't want and make special
9 deals by allocating its equity in order to take care of the
10 constituencies that it needs to operate the new company. The
11 new company doesn't need the old company's bondholders. It
12 doesn't need or want a lot of other things. Provisions of
13 Chapter 11 that might require a restructuring to recognize that
14 the value of New GM belongs to all of Old GM and its estates to
15 be allocated in a more equal and ratable way are simply
16 inconvenient.

17 The debtors argue that this Court has the power to
18 authorize this transaction if it finds that there is an
19 articulated business justification. The business judgment must
20 be reasonable and the purchaser must have good faith. This
21 derives from Lionel and its progeny.

22 But, Your Honor, I submit that assumes a genuine
23 sale. That assumes independence between a purchaser and a
24 seller. That assumes that a debtor has a real choice other
25 than to bend to the will of its lender and its purchaser

1 whereas here, the record shows an utter dominance of the
2 debtors including the fact that the principal negotiators for
3 the debtors are also to be the principal managers of the new GM
4 negotiating with the owner of New GM, the protestations of
5 arm's length negotiations and good faith are simply irrelevant.
6 The absence of real choice and the dominance of the government
7 creates an environment unique in this case in which those
8 factors that are required for a 363 sale cannot credibly exist.

9 Indeed, the testimony was that the sale price was not
10 so much negotiated as derived on the basis of asset values, but
11 was rather derived on the basis of the minimum amounts needed
12 to settle the claims of the favored constituencies. That this
13 later turned out to be supported by a fairness opinion is
14 irrelevant to the fact that it wasn't negotiated as any real
15 sale of assets would be. Your Honor asked yesterday why there
16 was a fairness opinion at all if there were no other bidders.
17 It's clear from the response that the fairness opinion and the
18 liquidation analysis was window dressing for the board, and
19 maybe for the Court.

20 In this case, no one came to the company offering to
21 buy any assets. The government came to GM with financial
22 rescue, not to buy assets. The government then came up with a
23 restructuring plan with union and bondholder settlements. But
24 it concluded that implementing it through a Chapter 11 plan
25 would give rise to potential rights and uncertainties and the

1 possibility of longer time than if it could be implemented as a
2 sale. So they made a conscious strategic decision to label
3 their restructuring a sale and a conscious strategic decision
4 to bypass and circumvent the Chapter 11 plan process.

5 The evidence shows that Treasury's lawyers presented
6 to Treasury alternative means of restructuring the company
7 including through a Chapter 11 plan and that 363 was chosen for
8 strategic purposes.

9 THE COURT: Pause, please, Mr. Richman. You've been
10 around the block a few times. To what extent either in this
11 court or Delaware or anywhere else in the country have you ever
12 seen a Chapter 11 case? Put aside a large one like this, even
13 medium size one, even cases in the fifty million dollar,
14 hundred million dollar range -- that has ever gone from filing
15 to confirmation within a period of ninety days.

16 MR. RICHMAN: Well, Your Honor, what we mention in
17 the briefs is pre-packs and pre-negotiated plans certainly have
18 been confirmed very rapidly. And this restructuring plan was
19 fundamentally a pre-negotiated plan. There were agreements in
20 place with the union, important agreements in place with some
21 of the senior bondholders. This could have been filed as a
22 pre-negotiated plan and put on an accelerated time frame.

23 Not only that, Your Honor, if the business objective
24 here, both on the --

25 THE COURT: Pause. Forgive me. Can you give me any

1 more specificity than that? Ninety days is a very short time.
2 A pre-negotiated plan, by definition, is, aside from the fact
3 that you haven't solicited your votes from the disclosure yet,
4 I get so-called pre-negotiated plans all the time where there
5 have been pre-negotiated secured debt or with major elements of
6 the unsecured creditor community. But when they've been filed
7 that way, I can't count the number of times, even in my pre-
8 packs, where one issue or another comes up and -- I'm trying to
9 think of any specific example to any you know which have been
10 able to meet that time frame. We have testimony, as I
11 understand it, from Mr. Wilson that he had gone to -- and I'll
12 have to look at the record for the number -- any number of
13 people experienced in Chapter 11. And the view was unanimous,
14 subject to me checking the record, that it would be suicidal to
15 expect it to be completed in that period of time.

16 MR. RICHMAN: There were two alternatives. Well,
17 first, let me respond to that, Your Honor. I have complete
18 confidence that, with the resources available here, that (a)a
19 pre-negotiated plan with the agreements that are in place and
20 sought to be approved with the sale could have been filed on
21 June 1st; and that Your Honor, upon cause shown, would have
22 accelerated the timetable and all of the objections and issues
23 and creditors' rights issues and many of the things that we're
24 hearing today in a truncated way could still be determined by
25 Your Honor, could still be determined on a fast track. Just

1 consider the extraordinary manner in which these hearings have
2 been held in the last couple of days, discovery over the
3 weekend, shortened times for everything. The same thing could
4 be done in an accelerated plan if the same arguments were being
5 made but creditors' rights would be accorded to that.

6 I can't tell you standing here right now of a
7 specific case where I know that that was done. Honestly, I
8 haven't had time to look for that. We did cite cases where the
9 record showed confirmation within so many days of filing all of
10 which were within thirty, sixty, ninety days, some of which
11 were a couple of days. Most of those were pre-packs; some were
12 pre-nego -- I believe some were pre-negotiated plans. I'd have
13 to check and we could submit something afterwards, if Your
14 Honor wishes.

15 But the other thing that I think is a useful response
16 to Your Honor, if the goal here that everybody says they want
17 is to create spinoff New GM, and it has to be done quickly
18 because that'll get it out of the bankruptcy environment and
19 allow public to understand that there's a new GM in place, that
20 could have been done without allocating the equity. The
21 company could have spun off the assets into a New GM. It could
22 do so today. It could do so under 363. But it could retain
23 the equity so that all the equity -- all the interest holders
24 in this case would still have a stake in it and that equity
25 allocation could then be done later pursuant to a plan so that

1 full creditors' rights are protected. And that would achieve
2 all of the objectives that the government and the debtors claim
3 that they have to achieve. It would be outside the bankruptcy
4 environment but instead of the government holding the equity
5 and determining how it gets allocated, the debtors would hold
6 the equity until a plan could determine how it should be
7 allocated.

8 Your Honor, the evidence shows that Treasury's
9 lawyers presented various alternative means of effectuating the
10 restructuring including through a plan and that 363 was a
11 deliberate strategic choice. It was only at that time, after
12 they decided to effectuate the restructuring through 363, that
13 the format of a sale was devised with a shell company and the
14 sale format was plugged in to fit the strategy. Once Treasury
15 mandated a restructuring using a 363 sale strategy, the script
16 was written in order to make that work. The company and its
17 advisors analyzed only two options: the sale or a liquidation.
18 They conspicuously failed to analyze or to present to the board
19 the possibility of spinning off GM's best assets to a new GM,
20 as I just indicated, or in an accelerated plan process.

21 The evidence shows that the government decided to use
22 363 not for any goal that a real purchaser would have but as a
23 restructuring tool. The government doesn't want to buy, own or
24 operate a car company. That's been said many, many times on
25 the public record. But if the Court allows this restructuring

1 under 363 then the government can take control more easily,
2 quickly and without providing value or distributions of a type
3 or amount that conceivably otherwise would be required in a
4 Chapter 11 plan.

5 It's a good strategy. We understand why they did it.
6 They have nothing to lose. They told the public, as did the
7 White House, that they hope to emerge from Chapter 11 in sixty
8 to ninety days. So if this Court decides that in the unusual
9 circumstances of this case including very distinguishing factor
10 from Chrysler, the absence of any independent third party
11 purchaser whose commercial needs are driving the deadlines, if
12 this Court decides that there is insufficient support under
13 Lionel and Chrysler to restructure under 363, the government
14 and the debtors can easily spin this as a temporary setback but
15 still well within their initial time frames. This case tests
16 the very meaning of Lionel and its limits.

17 These were the very concerns that the Second Circuit
18 had in articulating the Lionel guidelines, a balancing of
19 tensions between the need to preserve a business and the need
20 to protect creditors' rights. Lionel gave us six nonexclusive
21 factors for evaluating the propriety of 363 sales to dispose of
22 substantially all of the debtors' assets. But just before
23 reciting those factors, the Second Circuit cited to the Supreme
24 Court opinion in Committee for Independent Stockholders of TMT
25 Trailer against Anderson for the proposition that, and I quote,

1 "The need for expedition is not a justification for abandoning
2 proper standards." The president of the United States made a
3 similar statement in his inaugural address which we quoted in
4 our brief. In essence, we should not compromise our principles
5 for the sake of expediency.

6 Then the Second Circuit had to say, in words that
7 apply fully to the situation we face today, and I quote, "A
8 bankruptcy judge must not blindly follow the hue and cry of the
9 most vocal special interest groups; rather, he should consider
10 all salient factors pertaining to the proceeding and,
11 accordingly, act to further the diverse interests of the
12 debtor, creditors and equity holders alike."

13 As the case law has subsequently developed and as
14 reflected in these hearings and the arguments, the criteria
15 considered most important are a sound business judgment and the
16 question whether the assets in question are declining in value.
17 The need to preserve value, particularly where there is
18 evidence of deterioration, is often argued and cited to support
19 unusual speed, particularly when the sale is sought so early in
20 the case as it is here.

21 The only evidence before the Court demonstrates that
22 since filing Chapter 11, GM's assets are not wasting. They are
23 not deteriorating; they are not melting. Chapter 11 has
24 apparently, so far, stabilized the company and sales have
25 increased over the pre-bankruptcy period. Therefore, the

1 asserted need to effectuate a new GM very quickly or at least
2 by July 10, is not supported by evidence of declining value.
3 Indeed, it's clear from the testimony of both Mr. Henderson and
4 Mr. Wilson that the debtors' and the government's first day
5 fears about the negative effects that Chapter 11 would have on
6 GM were greatly exaggerated and unsupported at least over the
7 first thirty days. And we presume over the first sixty to
8 ninety days that they predicted that the case would last and
9 inform the public that the case would last. What we see in the
10 evidence is that because the parties attempted at all cost to
11 justify the need for a fast track sale, there were a number of
12 conclusory statements and predictions of dire consequences that
13 turned out not to be true.

14 Mr. Henderson's first day affidavit in evidence as
15 Debtors' Exhibit 15 states at paragraph 82 that "The value of
16 and consumer confidence in the GM brand and its products and
17 support systems are fragile and will be subject to significant
18 value erosion unless they are expeditiously transferred to New
19 GM and its operations start free from the stigma of bankruptcy.
20 Any delay will result in irretrievable revenue perishability
21 and loss of market share to the detriment of all economic
22 interest. It will exacerbate and entrench consumer resistance
23 to General Motors products." Mr. Wilson said that his concerns
24 about timing were informed by articles from commentators who
25 predicted GM could not survive Chapter 11.

1 But as we have seen from the evidence, these first
2 day predictions turned out not to be true. It is evidence and
3 not prophecy on which this Court should rely.

4 Though GM's overall financial performance was in
5 decline over a long period of time and clearly it is today on a
6 year-over-year basis below what it was a year ago, it enjoyed
7 improved performance in the first month of bankruptcy over the
8 month of May. Some of this may be attributable, as Mr.
9 Henderson testified, to the government backstopping of
10 warranties which occurred earlier and independently of any
11 bankruptcy filing. Some of it may also be attributable to
12 business strategies that Mr. Henderson and his team pursued
13 more recently. So the assets are not wasting or spoiling or
14 deteriorating.

15 Now, echoing his first day fears when he testified,
16 Mr. Henderson said that he thought one reason why the business
17 was doing better than expected in June was customer expectation
18 that the bankruptcy process would go quickly but he later
19 conceded that that was pure conjecture. Indeed, it became
20 clear from Mr. Henderson's testimony, as well as Mr. Wilson's,
21 that the fears of business decline that they said motivated
22 their desire for a fast track 363 as distinct from any
23 alternative were based on worries over a prolonged case --
24 "prolonged" was a word in the testimony -- one where the
25 company "languished" in Chapter 11. Mr. Wilson said Treasury

1 was concerned about a "traditional" Chapter 11 process.

2 Mr. Miller spent argument time warning of dire
3 consequences as well, not in the record of evidence but in Mr.
4 Miller's opinion, and concluded with the point that a Delphi-
5 like case would be bad for the business. That's not really
6 debatable but it's not the point.

7 The debtors argue that this transaction is the only
8 alternative to a liquidation but is it fair to say that there
9 is no viable alternative to a sale where you deliberately limit
10 your alternatives? I understand an aversion to a traditional
11 plan process. But here, where there was already the equivalent
12 of a pre-negotiated plan, an accelerated plan process could
13 have been and could yet be attempted. But no advisors were
14 asked to consider that or value it or present it as an option
15 to the board. Mr. Repko agreed that the value of a new GM
16 under a plan could be comparable to the value under the 363
17 transaction.

18 Now, Mr. Miller said that our suggestion of a Chapter
19 11 process that could be concluded within ninety days was
20 magical. Yet, as I indicated before, and I'd be prepared to
21 supplement the record with some further research, we know that
22 many cases with pre-packs and pre-negotiated plans have been
23 completed in that time frame without magic. And there is no
24 doubt that the debtors and the government have the resources to
25 do that here, to at least try that here. Perhaps the magic

1 that he was referring was making creditor objections disappear.
2 And if that's what he meant, then I agree that you couldn't do
3 that in a plan process. But this Court could have easily dealt
4 with as easily such issues in an accelerated plan time frame as
5 the Court demonstrated it could do with these hearings
6 especially in an extraordinary case like this. If there was
7 any magic here, it was the debtors and the government taking a
8 magic wand to a restructuring and saying poof, now you're a
9 sale. And with that, creditors' rights and plan protections
10 disappeared.

11 Since the evidence does not establish that the
12 business is deteriorating, the debtors' business judgment, if
13 it actually has any judgment of that sort in a case like this,
14 is narrowed to its asserted belief that the business
15 opportunity, if what the government is offering could even be
16 characterized as a business opportunity, is limited and
17 perishable. The government's offer of financing will expire on
18 July 10. If the debtors do not comply with the government's
19 dictates, liquidation will inevitably follow. The important
20 question is whether this Court has any power to disbelieve
21 that. From the debtors' perspective, we completely understand
22 the argument that they have to try this. They have to advocate
23 it and believe it. It's not business judgment, though, because
24 there's no real choice involved. It's inconceivable that any
25 company would choose to liquidate in the face of such a

1 government offer. Simply inconceivable. And we're not
2 criticizing the fact that the debtors have chosen this course.
3 And we're not criticizing the fact that they sensibly decided
4 not to liquidate. We're objecting to the form of the
5 transaction.

6 Even though the debtor had no choice, this Court
7 does. This Court can look through the form to the substance,
8 through the evidence to the truth and through the magic in
9 order to stand for the Chapter 11 process.

10 Now yesterday, Your Honor commented about our
11 familiar experiences with overbearing lenders. I believe the
12 comment was that lenders frequently overreach. In many such
13 situations the debtor, in dire need of financing, is in no
14 position to negotiate effectively. As here, the debtor is
15 given no real choice. Where the debtors' will is overborne,
16 the Court can and does step in. We see that all the time with
17 DIP financing and purchase -- 363 purchase provisions.
18 Desperate debtors agree to things demanded of them because they
19 have to. But the Courts will not hesitate to push back and
20 tell the lenders, sorry, I'm not approving those provisions.

21 THE COURT: I've done this a few times, Mr. Richman.
22 When you say we don't hesitate, I think that understates it a
23 little. Every time a judge rules on a DIP, he's rolling the
24 dice that he's going to crater the whole case if he messes
25 around with economic terms. If you give them extra time to do

1 investigations so they can bring their avoidance actions, we
2 make individualized adjustments as to whether 506(c) labors are
3 appropriate or handing over the proceeds of avoidance actions
4 are appropriate. But I cannot think of a single time in the
5 nine years I've been on the bench or the nearly four years I've
6 been doing this where I've ever told -- seen a judge tell a
7 lender that he has to agree to different deal terms.

8 MR. RICHMAN: I wasn't suggesting that, Your -- I
9 actually agree with Your Honor up to that point in the sense I
10 wasn't suggesting that you tell what the deal should be. But
11 Courts do and Your Honor has pushed back on provisions that
12 Your Honor was being told we're absolutely required by the
13 purchaser with the DIP lender. And Your Honor has said and
14 other judges have said, I want to prove those even though there
15 was the threat, difficult threat to deal with that the party
16 would walk away because the Court stands for the law and the
17 parties understand that they have to follow those dictates if
18 they want to do a transaction under Chapter 11. My only point,
19 which I think Your Honor was agreeing with, is that it's not
20 uncommon. When the debtor doesn't have the ability or leverage
21 or the independence of will to be able to fight back over
22 onerous provisions or even a mandated sale, the Court still has
23 the power and authority to do so.

24 Bankruptcy courts call the bluffs of billing lenders
25 and purchasers all the time. And that brings me to footnote 15

1 of Judge Gonzales' opinion in Chrysler In Chrysler, as here,
2 the main argument was that the debtor had no viable options but
3 a sale or a liquidation. Now, in that footnote, the Court
4 commented on a third option raised by dissenting creditors.
5 And I quote: "Based upon the U.S. government's substantial
6 interest in preserving the automobile industry, jobs and
7 retiree benefits, the intimation is that the government was
8 bluffing when it indicated that it would walk away from
9 exploring other options if the Fiat did not close quickly."
10 The proposed third option is that the debtors could have
11 refused to accede to the government's terms in the hope that
12 the government would capitulate and agree to consider other
13 alternatives. The Court concludes that gambling on the
14 possibility that the government was bluffing and listing the
15 potential for a lesser recovery in a resulting liquidation
16 would have been a breach of the debtor's fiduciary duty.

17 Judge Gonzales did not, however, say that he or any
18 other judge would be without power to call such a bluff. We
19 are not challenging the debtors' choice which was a non-choice
20 to proceed with the strategy. But we do say that in the
21 circumstances of this case, the Court has the power and
22 authority to push back. Many people say that Chrysler is the
23 blueprint for GM and that the cases are the same. They are
24 not. And they are completely distinguishable in the most
25 fundamental of ways. The deadline pressures in Chrysler were

1 in the main driven by the commercial needs of an independent
2 purchaser. The business opportunity was legitimate, commercial
3 and limited. By contrast, there is no real purchaser in this
4 case. The government is not setting any deadlines with
5 reference to commercial exigencies of the automotive
6 marketplace; it has no experience running a car company. The
7 deadlines were set to support the strategy of a 363
8 restructuring.

9 If you go to a Broadway musical, you expect an
10 orchestra. For a 363 fast track sale, you need a drop dead
11 date. It's part of the scenery; part of the show.

12 As distinct from the dissenters in Chrysler, we are
13 not suggesting that the debtor should have refused to attempt
14 the 363 transaction. We don't see how they could have. They
15 had no choice. As the evidence has showed, and as other
16 parties have argued, the principal decision makers and senior
17 management were not acting with any independence. They were
18 across the table from their new employer. They were arguing
19 with their new owner.

20 But this Court can push back. This Court can call
21 the bluff in the overriding interest of upholding the Chapter
22 11 process. Consider: the government has repeatedly said it
23 will not allow GM to fail. It has said it is committed to
24 creating New GM. It has already invested 19.4 billion dollars
25 pre-petition and perhaps as much as thirty three billion

1 dollars including DIP lending. It told the public it was on a
2 sixty to ninety day track. Like any powerful lender or
3 purchaser, it says, my way or the highway.

4 Mr. Wilson said that if the sale order was not
5 approved, Treasury would cut its losses. Now, I submit that
6 Mr. Wilson's credibility was open to question on some points.
7 His demeanor was markedly different from the other witnesses.
8 He's smart enough to know what findings the Court needs to make
9 to approve the transaction and I believe and I submit that he
10 answered some questions in ways designed to serve the end. For
11 example, he said that his understanding of the term
12 "languishing" meant anything more than thirty to forty days.
13 Most of his testimony was carefully couched in terms of present
14 intentions and beliefs.

15 But while the drop dead threat is out there, there is
16 nothing that binds the government to abandoning GM and the
17 government can and will react to a decision here, a decision of
18 law by this court, in a manner that is both politically and
19 economically sensible. Their agreement on funding
20 administrative expenses was limited to 950 million dollars.
21 But we heard Mr. Koch testify that he had a feeling or a belief
22 that they would step up and do something more. It wasn't in
23 writing but there may be a number of unwritten understandings
24 here as part of the strategy of how the parties are going
25 forward. And the clear impression from the sixty to ninety day

1 pronouncements from both GM and the White House is that while
2 Treasury may not be obligated to fund beyond July 10, they will
3 step up and do so if they have to. They have to threaten to
4 cut off financing.

5 THE COURT: Pause, please. Can you repeat that? And
6 say a little slower. And if you had a particular reference to
7 something, I ask you to repeat that as well.

8 MR. RICHMAN: Yes, Your Honor. I said the clear
9 impression from the sixty to ninety day pronouncements, which
10 we quoted in our brief from the outset of the case, is that
11 while Treasury may not be obligated to fund beyond July 10,
12 they will step up if they have to. And to expand on that, it's
13 inconceivable to me that the White House press secretary or
14 GM's CEO would be telling the public sixty to ninety days if
15 they didn't have some assurance of financing beyond July 10th.

16 THE COURT: Okay. You preceded the words about clear
17 impression. It's an inference you want me to draw --

18 MR. RICHMAN: Yes.

19 THE COURT: -- or, in fact, is it something somebody
20 said?

21 MR. RICHMAN: That's correct, Your Honor.

22 THE COURT: Okay. Continue.

23 MR. RICHMAN: The government has to threaten to cut
24 off the financing in order to limit the debtors' options and
25 perhaps those of this Court as well. But I don't think and I

1 don't believe this Court should believe that the government is
2 now going to abandon GM if this Court merely says that the use
3 of 363 is not legally supportable in this case. Do it another
4 way. It's not credible to think that the White House will say
5 tomorrow, we've now decided to let GM fail because we don't
6 want to follow the law. We didn't get our way in court on an
7 attempted fast track sale so we're going to give up --
8 sacrifice three-quarters of our investment and flush GM away
9 and the thousands of jobs with it and the dealer network and
10 the dependent suppliers and so on and so on. All the same
11 considerations that the debtors have argued are important
12 reasons to approve the transaction are at least equally
13 important reasons why the government will obey the law if Your
14 Honor determines that the law is that 363 can't be used on a
15 fast track under these circumstances.

16 Now, there was a related power or leverage threat
17 that seemed to come through in the hearings, something like an
18 additional drop dead threat that might be added, pressure for
19 approval of the transaction. And that was the suggestion that
20 the UAW agreements to modify their collective bargaining
21 agreement were in some way conditioned upon and could be
22 rescinded or undone by a failure to approve the sale order by
23 July 10. And I thought that's what Mr. Curson said in his
24 testimony.

25 Your Honor, we checked the documents that were

1 submitted in evidence in the records and we could not find
2 anything in writing in the evidentiary record which conditions
3 the collective bargaining agreements in any way. And both Mr.
4 Henderson and Wilson testified that those amendments were
5 already in effect and that the amended bargaining agreement is
6 now governing.

7 In particular, we looked at the amendments that the
8 UAW filed. We just didn't see anything which provided that if
9 the sale order wasn't approved by July 10 that those amendments
10 would be rescinded.

11 Now, the agreement to fund the VEBA, which we ask
12 questions --

13 THE COURT: Pause, please. Can you slice and dice
14 that piece of information? If I heard you right just a second
15 ago, you said by July 10. Would you mean to include or exclude
16 by that whether you had a view as to whether the union would
17 continue to perform this day to day stuff if it didn't get its
18 VEBA funding, new VEBA funding, one way or another or if you're
19 back to square one?

20 MR. RICHMAN: I do have a view of that, Your Honor.
21 My view on that is that the collective bargaining agreement is
22 a binding contract. And it's in effect and it's operative now
23 regardless of what happens to the VEBA at least as I read the
24 record and the evidence. The VEBA deal, I think, is a separate
25 deal. And I understand if it is, at least again as I

1 understand the record, it makes sense to me because one could
2 argue that the overall settlement in terms of the amendments to
3 the collective bargaining agreement are an asset of the estate
4 and that the VEBA deal is part of a consideration that should
5 actually go to the estate. But if you keep them legally
6 separate such that the VEBA is not inextricably intertwined
7 then maybe you create a better argument that the VEBA is like
8 the equivalent of giving stock to somebody by the purchaser and
9 isn't really consideration for the modification and then the
10 assumption and assignment of the collective bargaining
11 agreement.

12 THE COURT: Help me on that a little more, because I
13 thought the duty to the UAW's VEBA was in the ballpark of
14 twenty billion bucks and it was a liability rather than an
15 asset.

16 MR. RICHMAN: Your Honor, all I can say is we didn't
17 find any linkage that would cause that to fail in any way. And
18 in any event --

19 THE COURT: Your basic point is that, if you read the
20 documents, you're questioning whether Mr. Curson's right in his
21 view that he's got a package deal here.

22 MR. RICHMAN: Exactly. It goes to the question of
23 whether there's some further dire consequence that Your Honor
24 should consider would result if Your Honor did not approve this
25 transaction by July 10. And I submit that it's not a dire

1 consequence because of the lack of linkage. And if there's a
2 separate agreement on the VEBA, that separate agreement, I
3 don't know that it's conditioned on a July 10 approval, but
4 presumably that would still be in play for a plan process.

5 THE COURT: Go on, please.

6 MR. RICHMAN: As we've seen from the hearings, there
7 are many other questions and issues that a plan process could
8 better address: Why is the government getting full credit for
9 prepetition loans that could be challenged as equity? Doesn't
10 that call for more cash to be put into any deal, whether under
11 363 or a plan? Other counsel have raised serious questions
12 about the bypassing of rights under Section 1114 of the Code
13 and of attempts to shed successor liability. And we've also
14 raised other arguments in our brief, to which we continue to
15 adhere, including that the transaction should also be rejected
16 as a sub rosa plan.

17 THE COURT: Okay. Pause, please. On the
18 recharacterization point, are you contending that not only the
19 pre-petition secured debt ballpark or nineteen billion bucks --
20 I'd have to check, or maybe it's thirteen billion, I'd have to
21 check the exact figure on that -- should be recharacterized?
22 Are you also contending that the thirty-three billion bucks of
23 U.S. and Canadian DIP financing also has to be recharacterized?

24 MR. RICHMAN: Only the pre-petition debt, Your Honor.
25 I think that in a case that wasn't moving at quite this

1 lightning speed where parties had a real opportunity to
2 negotiate allocations and distributions, that there would be
3 greater focus on the priority of that pre-petition loan as
4 compared to other creditors. I partic --

5 THE COURT: But stick with me for a second. Suppose
6 the U.S. government had only bid thirty-three -- credit bid
7 thirty-three billion instead of fifty-nine billion. I'm not
8 aware of there being any bids in the wings that could have
9 trumped a credit bid if it was low as thirty-three billion --
10 as low as.

11 MR. RICHMAN: And we know, we know, as a fact that --

12 THE COURT: -- as thirty-three billion as well.

13 MR. RICHMAN: We know as a fact that there weren't.
14 I think that the way I would answer that is if the debtors have
15 produced a fairness opinion that indicates that the fair value
16 for the company is 90 billion dollars or 70 billion dollars,
17 and then you back out 19.4 billion dollars, it suggests that
18 the consideration is short by 19.4 billion dollars and that
19 there either has to be a reallocation of the equity or the
20 infusion of additional funds in order to meet the fair price.

21 But I agree with Your Honor that had this gone
22 differently as a real transaction might have gone -- remember,
23 this wasn't negotiated as a sale of assets. This was a
24 determination of how much money it would take to reach
25 settlement agreements with the favored constituencies, and

1 everything else was backed into that. And then, so, a price
2 was derived on the back end.

3 We also argued, Your Honor, that the transaction
4 should be rejected as a sub rosa plan. I'm not going to spend
5 a lot of time on that. The debtors' answer to that is that it
6 doesn't predetermine a plan because, the way this transaction
7 is designed, the 10 percent of stock and the warrants to
8 acquire another 15 percent and, I guess, the 950 million
9 dollars for administrative expenses is being left behind to be
10 distributed in the normal course.

11 But, Your Honor, if you engage in a transaction which
12 removes from the plan matrix an important class of creditors
13 and give them favored treatment outside of the plan process,
14 that's as much predetermining the plan as leaving them in the
15 plan process. You are still predetermining and creating the
16 construct of a plan but you're doing it through extra plan
17 provisions. So I don't think -- just because this doesn't
18 dictate distributions to every class doesn't mean that somehow
19 it's not a sub rosa plan.

20 I want to be clear about an important point, and it's
21 another distinction from the Chrysler case, particularly in
22 respect of parties who stand in the position of bondholders, as
23 our clients do. We've never argued, and we don't contend, that
24 GM should liquidate. We support the creation of a New GM. We
25 think it's a fine idea and we defer to the collective judgment

1 of the professional advisors on that issue.

2 And we appreciate that GM would already be liquidated
3 if the government had not come in late last year to provide
4 financing that no one else could provide. We wouldn't be here
5 discussing this today if the government wasn't committed to
6 saving GM. But that does not earn the government an exemption
7 from the law. Our gratitude to the government rescue does not
8 include sacrificing our legal principles. Perhaps the
9 government could nationalize GM, and we would all be left with
10 nothing, but they chose Chapter 11. And once you choose
11 Chapter 11, you should comply with all of Chapter 11. The
12 government should not be permitted to cherry-pick which
13 provisions of Chapter 11 it will use and which it will not use.

14 Right now, the value of New GM rightfully belongs to
15 the estates and all of its creditors. New companies are spun
16 off through Chapter 11 reorganizations all the time. In that
17 normal process, all of the major constituencies participate in
18 negotiations concerning overall value and allocations of that
19 value. The final results are accompanied by full disclosure.
20 Parties-in-interest have protection against oppressive results
21 through Section 1129. These negotiations would determine how
22 much equity in New GM the Old GM should award to the government
23 or the union or to other parties. That's the essence of the
24 Congressionally-mandated corporate reorganization process of
25 Chapter 11.

1 By taking what would otherwise be a deliberative
2 reorganization involving all major parties on an accelerated
3 basis and calling it a sale that must be completed by June 10
4 to avoid dire consequences, the debtors and the other favored
5 parties in the allocation of values are engaged in a fiction,
6 in a pretext, in a subterfuge to avoid a plan process in which
7 the allocations of value might be determined differently.

8 We get their arguments. If you accept that this
9 transaction is a legitimate sale, then of course the purchaser
10 can choose to divide up the ownership any way it likes. And
11 therefore, of course, its arrangement with the UAW and the
12 Canadian and Ontario governments, parties who are providing
13 unique present and future value to the new business, is its
14 prerogative. But if it's not a legitimate sale, or if the
15 other tests of 363 are not met, then these important allocation
16 decisions would not be the purchaser's to make.

17 If this Court does not have the freedom to push back,
18 if any distressed company can be diverted into Section 363 in
19 order to avoid plan confirmation requirements by overbearing
20 lenders or purchasers setting arbitrary deadlines or, more
21 importantly for the facts of this case, by an overbearing
22 government, then the Court does not truly have discretion.

23 We have seen before in our history how in times of
24 stress and extraordinary circumstances government asserts
25 itself on more grand and powerful scales than before. In

1 substance, this appears to be an historic first attempt at a
2 Chapter 11 nationalization. GM has no ability to resist that
3 power. In our system of government, it is the judicial system
4 which is the primary check on that power. This Court can and
5 should draw the line and hold that this transaction goes too
6 far. Doing so is consistent with Lionel and with Chrysler.
7 Such a holding which recognizes the important distinctions
8 between this and every case that has gone before sends a
9 powerful message that even in the bankruptcy courts of the
10 nation's commercial capitol there are limits and that due
11 process and creditors' rights are important values not to be
12 sacrificed in the interest of expediency. Thank you, Your
13 Honor.

14 THE COURT: Thank you. Thank you, Mr. Richman.

15 All right, Mr. Parker, I'll hear from you. Mr.
16 Parker, on anything that Mr. Richman addressed, I'll ask you to
17 limit yourself to anything where you think Mr. Richman failed
18 to do an adequate job.

19 MR. PARKER: Okay, Your Honor. If I may, may I begin
20 by asking the Court to -- for time reasons, and because I think
21 certain things have been adequately argued already, I'm not
22 going to argue some points that I've raised in my objections,
23 but I'd like to preserve those points.

24 THE COURT: Of course. Anything anybody said in a
25 brief or in a pleading is deemed to have been asserted. I

1 mean, the purpose of oral argument, in my court, is not to
2 repeat or to have to say again what you said in your papers.
3 It's to give me orally anything which helps me better
4 understand the papers or answer things where you're plugging
5 the holes.

6 MR. PARKER: Okay. So I'm not waiving anything, any
7 points --

8 THE COURT: Right.

9 MR. PARKER: -- by not mentioning it.

10 THE COURT: That's what I said.

11 MR. PARKER: I know, I'm just clarifying for myself.
12 I'd also like to also incorporate by reference the arguments of
13 Mr. Kennedy and of --

14 THE COURT: To the extent you need to, it's done.

15 MR. PARKER: Okay, and also my immediate predecessor
16 up here.

17 THE COURT: Same.

18 UNIDENTIFIED SPEAKER: Mr. Richman.

19 MR. PARKER: Mr. Richman, right.

20 Thank you, Your Honor. Your Honor, basically I want
21 to address four points, if I may, four points that I don't
22 think have been addressed. One I wish to address very, very
23 briefly, and I'll begin it with apologizing to the Court for my
24 less-than-stellar performance on Tuesday. But I think that
25 less-than-stellar performance is at least partly the result

1 of -- I object to the process, and I've objected in my
2 objections, to the process chosen by the debtor. This is not a
3 criticism of the Court or of yourself; this is a criticism of
4 the process they chose.

5 I don't believe that there has been adequate time to
6 prepare a response to their motion. For example, and after
7 making the example I'll move onto another point, for example,
8 they criticize, or in their oral argument to the Court they
9 have emphasized, that they're the only ones who've provided any
10 valuation scenarios for General Motors. Well, of course, they
11 had several months to prepare those valuation scenarios. We've
12 had less than thirty days. The time frame -- I mean, I filed
13 my objection on June 19th, so I've basically had eleven days.
14 In eleven days you can't find an expert, have an expert get
15 access to the records and create a valuation report. I don't
16 think it can be done. So I'm objecting on those grounds.

17 But I'll move on. One of the things I'm objecting
18 to, and I believe I'm the only one who's objecting on this, is
19 the limitation-on-liens argument. The -- I rest upon two
20 documents -- well, three documents: first, the 1995 indenture,
21 which I believe is Debtors' Exhibit 10 in evidence, if my notes
22 are correct. Section 1408 provides that it's governed by New
23 York and is to be interpreted by New York law. Section 406
24 contains a limitation-on-liens provision, which I think the
25 Court can read; I don't think the Court needs me to repeat it.

1 In addition, there's Parker's Exhibit 1 in evidence,
2 which I believe is my only exhibit, which is a prospectus
3 supplement dated June 26, 2003 for six and a quarter Series C
4 convertible debentures due in 2033, with an attached prospectus
5 dated June 19th, 2003. If you look at page 23 of the June 19th
6 prospectus, the one that's attached to the supplement, you'll
7 find that the identical limitation-on-liens provision is found
8 in that prospectus and that it applies to my bonds. The
9 prospectus also states that my bonds are issued under the 1995
10 indenture.

11 Now, the third document that I'm relying upon is -- I
12 believe it's Debtors' Exhibit 6. Again, back there it's
13 difficult to keep track of which exhibit is which, but it's the
14 loan and security agreement dated December 31st, 2008. And if
15 you'll give me one second to get the agreement. Here we go.
16 If you go to page 35 of Exhibit 6, which -- and I'm using the
17 numbers on the top right-hand corner --

18 THE COURT: Go on.

19 MR. PARKER: Do yours have the same pagination?
20 Otherwise, I'll use the pagination from the original document.

21 THE COURT: Why don't you speak to it, because it'll
22 take me a little bit of time to find it. But --

23 MR. PARKER: Sure, if I may.

24 THE COURT: -- I'll assume, unless somebody
25 disagrees, that you're accurately reading to me. And I'm

1 familiar with the issue. What I want you to focus on is
2 excluded assets within the meaning of the December 31st, 2008
3 agreement.

4 MR. PARKER: Yes, sir, I know, I'm getting there.
5 Paragraph -- or I should say section 4.01(a) creates a lien on
6 all real and personal property wherever located, except where
7 excluded. Okay, section -- subsection - sub-subsection (a)(6)
8 provides a lien on all personalty; it gives a nonexclusive
9 definition of personalty, including equipment and instruments.

10 Section 4.02 provides that General Motors is to
11 provide UCC filings in order to perfect the government's liens
12 on all equipment. And there's a schedule of all the properties
13 where equipment is located that UCC liens are to be filed for;
14 that's section .402 (sic) on page 36. And, again, I'm using
15 the pagination 36 of 111 in the top right-hand corner.

16 Section 6.09 has excluded collateral, and it refers
17 one to schedule 6.29. It states that section 6.29 is a
18 complete and accurate list -- by the way, that's 6.29, I'm
19 sorry, not 6.09. Section 6.29, which is on page 51 of 111,
20 states that, on excluded collateral, "See, set forth on
21 Schedule 6.29, is a complete and accurate list of all excluded
22 collateral of each property." When you go to schedule 6.29,
23 you get a blank page. It says "Schedule 6.29, Blank". So
24 apparently there is no excluded property.

25 It then goes on --

1 THE COURT: Mr. Parker, are you going to eventually
2 get to subsection v --

3 MR. PARKER: Yes, yes.

4 THE COURT: -- romanette v, one of the definitions of
5 excluded collateral?

6 MR. PARKER: Yes, sir, but -- okay. I am eventually.
7 My point about what I -- to summarize, I was going through the
8 documents to show you -- I realize that there is a subsection v
9 on -- bear with me a second -- section 4.01, subsection v,
10 defines excluded -- has a definition of excluded property but
11 says "any property, including any debt or equity interest, any
12 manufacturing plant or facility which is located within the
13 continental United States, to the extent that the grant of a
14 security interest therein to secure the obligations will result
15 in a lien or an obligation to grant a lien in such property to
16 secure other obligation". I understand that that's there.
17 What I'm trying to show the Court is that even though that's
18 there they still went and filed liens on property. And I don't
19 think you can file liens on property and get an excuse for it
20 by saying oh, well, I filed someplace else a statement that if
21 I did it I didn't mean it.

22 The documents show that -- I might add, if you go to
23 section 6.30, Mortgaged Real Estate, that's actually the only
24 section that I've been able to find where they have language
25 that says we do not have a lien on mortgaged real estate if the

1 lien would give rise to a lien in favor of a person as set
2 forth in schedule 30 hereto. By the way, schedule 30 hereto is
3 also blank.

4 It seems to me that they have, whether they were
5 allowed to or not, and whether they've excused themselves from
6 doing it or not, filed liens on two classes of property that I
7 would like to bring to the Court's attention. The first class
8 of property is listed in schedule 6.25, which is the UCC
9 filings. They have filed the UCC filing -- lien on the
10 following -- on the manufacturing and equipment of the
11 following localities: the Doraville Assembly Center, the
12 Janesville Assembly Center, the Moraine Assembly Center, the
13 Massena Castings, Pittsburg Metal Stamping, Grand Rapids Metal
14 Stamping, Spring Hill Manufacturing Campus, Wilson Run (ph.)
15 PDC, Latsina (ph.) PDC, Pontiac North Pitt 17, Pontiac North
16 PC, Yps -- I can't even pronounce it -- Ypsilanti Vehicle
17 Center, Beavertown PDC, Grand Blanc Metal Center, Former Cherry
18 Town Assembly, Former Validation Center, Former Lansing Plants
19 1, 2, 3, and 6.

20 Finally, Your Honor, under schedules 1.1 and 1.2,
21 they've made it clear that among the assets that have been
22 liened are Saturn. Saturn is -- at least according to the
23 testimony of Mr. Fritz Henderson, Saturn is the only
24 manufacturing -- American manufacturing subsidiary of General
25 Motors. They've liened that. And indeed, because they liened

1 that, I believe that Saturn is a -- has an accompanying
2 bankruptcy proceeding that's consolidated with this one.

3 Now, I realize they say they gave themselves an
4 escape clause and if we lien something and we shouldn't have it
5 as liened. But in point of fact, they did lien it. And the
6 escape clause shows that they knew that they had obligations
7 not to lien it. And when they liened it, when they liened
8 these facilities and when they liened Saturn, under the terms
9 of the bond indenture, the 1995 bond indenture, the bondholders
10 acquired liens equal and ratable to that of the government.

11 THE COURT: Mr. Parker, do you think that if Mr.
12 Schwartz had come in to me and said I got a lien on that stuff
13 and any other party-in-interest in the case showed me romanette
14 v he wouldn't have been left out of court?

15 MR. PARKER: I don't know, Your Honor. I do know
16 that they attempted to perfect a lien on these assets even
17 though they were prohibited from doing so. And, Your Honor, if
18 nothing else, I believe that that goes toward the issue of bad
19 faith. I believe -- which, by the way, gets us to the next
20 issue that I wish to discuss.

21 THE COURT: Good time to do it.

22 MR. PARKER: Pardon?

23 THE COURT: Go ahead, please.

24 MR. PARKER: Give me a second to get there.

25 In order to approve a 363 sale, the government must

1 allege and prove good faith. In looking at good faith, the
2 Court, I believe, needs to take a look at the totality of the
3 circumstances concerning not only the sale but of the events
4 leading up to the sale under the arrangement between the lender
5 and the debtor. Even if they did not succeed in acquiring
6 liens on the properties -- on that long list of manufacturing
7 equipment that I listed -- and on Saturn, the only -- to the
8 best of my knowledge, and according to Mr. Henderson's
9 testimony, the only manufacturing subsidiary of GM, they
10 attempted to acquire liens. They made UCC filing statements.
11 Schedule 6.25 shows the places where they scheduled and what
12 they -- the places where they liened the equipment and what
13 they liened. Doing so, attempting to do so, Your Honor, is an
14 attempt to violate the covenants of our indentures.

15 In addition, the further evidence of bad faith is
16 found in the fact that their 363 sale procedure is tantamount
17 to a distribution plan which discriminates in favor of certain
18 favored creditors against others, as has been previously argued
19 by others. Also, their 363 plan, as argued by Mr. Kennedy, is
20 designed to avoid a Section 114 hearing and the effects of the
21 114 hearing.

22 THE COURT: 114?

23 MR. PARKER: 1114, I'm sorry. 1114. Further, Your
24 Honor, as ably argued by --

25 UNIDENTIFIED SPEAKER: Mr. Richman.

1 MR. PARKER: Mr. Richman, sorry. You can obviously
2 tell there's not been much coordination between us. As ably
3 argued by Mr. Richman, there is no real purchaser. There is no
4 real -- there's been -- there's no real purchaser, there's been
5 no real negotiation. This is basically the government selling
6 GM to itself.

7 Furthermore, Your Honor, and I guess this gets me to
8 my next point, I've argued in my objection that the government
9 is not authorized to purchase General Motors under EESA, that
10 is, the Emergency Economic Stabilization Act, or under TARP,
11 the Trouble Assets Recovery Program. The -- as Mr. Wilson
12 testified, the loans that were given to General Motors were
13 given from TARP funds. I have argued -- and I'm not going to
14 repeat the arguments here, I'm going to rest upon the argument
15 in the objection -- I have argued that the government is not
16 authorized, was not authorized to make those loans under TARP.
17 Making loans that it is not authorized to make is also evidence
18 of bad faith.

19 I realize that there is some question of whether I
20 have standing to raise this issue, and I'd like to address that
21 very briefly. I do not believe that I have standing to
22 challenge the use of TARP money for the DIP lending, for the
23 DIP loans. I believe you entered an order authorizing DIP
24 financing back on June 25th. I had no standing to object
25 because I was not harmed by that action. Because I did not

1 have standing to object, I didn't object. However, I am harmed
2 by the government's proposed sale procedure, and because I am
3 harmed -- if they are going to use a credit bid of roughly
4 forty-nine billion dollars of TARP money to purchase GM. So
5 they are using TARP money to make a purchase.

6 If my argument, as set out in the objection, is
7 correct, they are not authorized to use TARP money. They may
8 use TARP money to buy a bank; they may use it to buy all sorts
9 of financial institutions. But whatever else General Motors
10 may be, it is not a financial institution. The use of money to
11 do something that they are not authorized to do is evidence of
12 bad faith.

13 Finally, Your Honor -- further, Your Honor, on bad
14 faith, I have argued in my brief that there are Constitutional
15 probl -- that there are Fifth Amendment taking problems with
16 the proposed proceeding. I'm not going to repeat those
17 arguments here. But, again, those concerns are evidence of bad
18 faith.

19 Which gets me to my final point. I'm trying to go as
20 quickly as possible; I'm trying not to use too much time. My
21 final point, Your Honor, if I can find it -- oh, yes. I need
22 to refer to one more exhibit, if I may. Here we go. My final
23 complaint, Your Honor -- and by the way, I -- my final
24 complaint refers to the scheme of distribution, the
25 distribution of the sale proceeds of this 363 proceeding. Now,

1 I want to make clear, I'm not objecting to the sale price. As
2 I understand it -- and I'm referring now to the declaration of
3 Stephen Worth, Debtors' Exhibit 3, Exhibit F, page 15. I don't
4 know what exhibit number Stephen Worth -- I don't know what
5 exhibit number it is, but his declaration is in evidence -- he
6 testified -- Exhibit F, page 15. It is an analysis of the
7 proposed transaction. It shows that the United States Treasury
8 is paying 104.5 billion dollars. By the way, I'm using the
9 lower numbers in these calculations. There's a difference; he
10 gives a range of -- it's usually only two to three billion
11 dollars different; I'm using the lower number. You can redo
12 the calculations with the larger number if you prefer.

13 He gives a bid of 104.5 billion dollars. That's
14 what, according to him, the Treasury is paying for General
15 Motors. I think that's a fair price for General Motors; I'm
16 not quibbling over that. According to him, the way that the
17 government is paying it is they're making a credit bid of 48.7
18 billion dollars of secured lending. Now, I don't think he
19 quite explained to you how that number comes about, so I'd like
20 to explain it to the Court, if I may. The total secured
21 indebtedness, excluding my argument about bonds, the total
22 secured indebtedness is approximately fifty-six billion
23 dollars. The way you get that number is you take the 19.4, you
24 take the 33.3 and you add on the 6 billions that are owed to
25 previously secured lenders. You add all those numbers up; you

1 come into approximately fifty-six billion dollars.

2 The government is taking back a loan, a secured loan,
3 from General Motors, the New General Motors, of approximately
4 seven billion dollars. They're also taking back two billion
5 dollars in preferred stock. If you take those two numbers out,
6 you come up with the 48.7 billion dollars that is listed here
7 on page 15 of Exhibit F of Stephen Worth's declaration.

8 Now, I fully recognize that secured lenders should be
9 paid first. So out of the 104 billion dollars they should get
10 their 48 billion. The problem is that when you look at the
11 sheet you realize that he -- that the other way, the other
12 consideration given, is that -- and if you look at the second
13 column -- the government is assuming and paying in full, or
14 agreeing to pay in full, 48.4 million (sic) dollars of
15 unsecured debt, which, by the way, according to the testimony
16 of everybody who's been up here, does not include the debt of
17 the UAW VEBA.

18 Now, personally, I find that testimony to be -- I
19 question the testimony. It seems to me that if the UAW VEBA is
20 getting 20.5 million dollars and is releasing its claim of
21 20. -- did I say million? I meant billion -- 20.5 billion
22 dollars and releasing its claim of 20.5 billion dollars in the
23 estate, that seems to me to be a payment.

24 For the purpose of this argument at the moment
25 though, I'm not going there. I've argued that in my objection;

1 I will -- obviously have argued that here. I agree with that
2 argument. But I'm arguing something slightly different. If
3 you take -- since the 20.5 billion is gone, according to this
4 sheet the total indebtedness for General Motors, that is, I
5 guess, real indebtedness, not just pro forma indebtedness, is
6 roughly 104.5 billion dollars, excluding the -- no, that's not
7 right, it's 48 and 48 makes 96; 97 plus 35 makes -- roughly 132
8 billion; I may be off by a billion or two because I did a fast
9 calculation in my head. The real debt in General Motors is 132
10 billion, excluding the 20.5 billion that's owed to the VEBA.
11 The government's getting 48.7 billion to pay off secured
12 lenders. That leaves 83.4 billion dollars in unsecured debt
13 that needs to be taken care of. 48.4 billion is being paid 100
14 percent on the dollar; 35 billion, including the 28 billion in
15 bonds -- and by the way, they keep saying it's 27, but when you
16 do the math with interest to June 1st or May 31st, take your
17 pick, 2009, it actually comes to 28 billion. The 28 billion
18 dollar debt is getting 7.4 billion dollars; roughly 20 cents on
19 the dollar.

20 So under the sale procedure, some unsecured
21 creditors, favored unsecured creditors, and we're not talking
22 about the VEBA now, are getting a hundred cents on the dollar
23 while others are getting twenty cents on the dollar. My
24 objection is let's take the purchase price but let's treat all
25 the unsecured creditors equally and ratably. And if you do

1 that, they would all get sixty-six cents on the dollar.

2 Furthermore, Your Honor -- so, Your Honor, that, I
3 believe, is my final point. The government is not only showing
4 favoritism with regard to the VEBA; they're showing favoritism
5 with regard to other unsecured claims. In a Chapter 1129
6 proceeding, those unsecured claims would be treated like all
7 other unsecured claims. And this, by the way, gets back to
8 good faith. In order for the government to be showing good
9 faith, they must be treating all unsecured creditors fairly.

10 Now, allegedly they have a good business reason for
11 treating the VEBA differently. I don't buy it; you may. I'm
12 not arguing that for this second. I don't agree with it. I've
13 argued otherwise in my objection. But putting that to one
14 side, they still have an obligation to treat all the remaining
15 creditors fairly, and they're not doing so. They're picking
16 winners and losers. And they've given no business
17 justification for these other winners that they've picked.

18 And for these reasons, Your Honor, I would urge you
19 to reject the sale. And I will make clear, I want General
20 Motors to reorganize. It is not in my interest or any
21 bondholder's interest to see General Motors liquidated,
22 although we have not had time to make a liquidation analysis.
23 All we want is an opportunity to negotiate in good faith with
24 the government to come up with a plan that is fair, fair to all
25 unsecured creditors.

1 With that, thank you very much, Your Honor, and I
2 want to thank you for your indulgence over the past three days.

3 THE COURT: Very well. Thank you.

4 All right, Mr. Bernstein?

5 MR. BERNSTEIN: I'll try to be brief, Your Honor.

6 THE COURT: Yes, I understand the issues. The main
7 thing I want to hear from you on is whether there's recall
8 authority supporting the idea that the consent decree
9 obligation is something other than a monetary obligation.

10 MR. BERNSTEIN: Yes, Your Honor. First thing that
11 supports it is that -- may I approach the bench, Your Honor?

12 THE COURT: Yes, sir.

13 MR. BERNSTEIN: Nolan entered a joint stipulation,
14 modified the consent decree and then entered the pack of them
15 as a final judgment of the United States District Court for the
16 Southern District of Indiana.

17 PENINA 1:24:32

18 THE COURT: Is this new evidence, or is this --

19 MR. BERNSTEIN: I believe you can take judicial
20 notice of this. We found this last night in response to Your
21 Honor's question, and you'll see the second as the final
22 judgment, Your Honor. It was entered by Judge Nolan under
23 54(b).

24 THE COURT: All right. Pause, please, Mr. Bernstein.
25 Mr. Miller, do you object to me considering this?

1 MR. MILLER: No, Your Honor.

2 THE COURT: Okay.

3 UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor, we
4 don't have a copy of the judgment --

5 MR. BERNSTEIN: I can give you -- I have extra copies
6 for you, I'd be glad to provide them. Here's the stipulation
7 and order, and let's see if I have copies -- and here's an
8 extra copy of the final judgment.

9 The second point, Your Honor, the legal context is
10 set by the Supreme Court of the United States. One of the
11 leading cases is Rufo v. Inmates of Suffolk County Jail. The
12 citation is 502 U.S. 367. And the relevant citation is at page
13 378: "There's no suggestion in these cases that a consent
14 decree is not subject to Rule 60(b)." I have Rule 60(b) as a
15 rule for modifying judgments.

16 THE COURT: Right. And --

17 MR. BERNSTEIN: Right. "A consent decree, no doubt
18 embodies an agreement of the parties, and thus in some respects
19 is contractual in nature. But it is an agreement the parties
20 desire and expect will be reflected in and be enforceable as a
21 judicial decree that is subject to the rules generally
22 applicable to other judgments and decrees."

23 The case counsel cited was one of these cases
24 involving an interpretation of the language of a consent order
25 or a consent decree, and yes, to that narrow context, the

1 courts look to contractual reasons, because the judgment
2 reflects an agreement of the parties. But in terms of
3 enforcement, a leading case in the Second Circuit is Badgley v.
4 Santa Croce -- I'll spell out the name, because I'm making a
5 hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v.
6 S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit
7 reversed a decision of the district court denying the
8 enforcement of contempt proceedings in a civil consent decree
9 context.

10 "The respect due to the federal judgment is not
11 lessened because the judgment was entered by consent. The
12 plaintiff's suit alleged denial of their Constitutional rights.
13 When the defendants chose to consent to a judgment rather than
14 have a district court adjudicate the merits of the plaintiff's
15 claims, the result was a fully enforceable, federal judgment,
16 that overrides any conflicting state laws or state order.
17 The --"

18 THE COURT: I hear you, Mr. Bernstein. But where I
19 need help from both sides --

20 MR. BERNSTEIN: Yes, sir.

21 THE COURT: -- is whether when a federal court
22 proceeding gives rise to a judgment, consent or otherwise, that
23 creates a monetary obligation --

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: -- where the monetary obligation is a

1 discharge of a debt?

2 MR. BERNSTEIN: I misunderstood the question that you
3 raised yesterday. I thought you were raising the question
4 whether this was a mere contract or whether it was --

5 THE COURT: That was, for better or for worse,
6 another way of saying the same thing. And if I didn't say it
7 as well as I should have, I owe everybody in the room an
8 apology. But as I understand the issue, a consent decree
9 issued by a federal court required the debtor to pay money.

10 MR. BERNSTEIN: That is correct, Your Honor.

11 THE COURT: And the question that I need help in is,
12 is this like a lot of the other -- the debtors' other
13 contractual debts which, at least, seemingly fall within the
14 unsecured creditor community, or whether there's something
15 special about a monetary obligation that's been created by a
16 federal court decree that makes me analyze it in a different
17 way?

18 MR. BERNSTEIN: I would answer it this way, Your
19 Honor. This is a judgment, and the deliberate refusal by
20 General Motors to honor that judgment was inequitable conduct,
21 indeed conduct potentially punishable by civil contempt. And
22 therefore the Court has good grounds to modify on an equitable
23 basis, the sale agreement to provide for the small adjustment
24 we requested. And of course, Mr. Wilson yesterday testified it
25 was unlikely that the transaction -- the financing would be

1 affected by that.

2 THE COURT: Okay.

3 MR. BERNSTEIN: Thank you.

4 THE COURT: Thank you very much. All right. Yes?

5 MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski -

6 -

7 THE COURT: Well, I need you to come to a microphone,
8 please. I take it you're coming up because you wanted to argue
9 on any of the issues we have before us.

10 MS. WICKOUSKI: Um --

11 THE COURT: And that your predecessors haven't done
12 it adequately.

13 MS. WICKOUSKI: -- yes, Your Honor. And my name is
14 Stephanie Wickouski. I'm here on behalf of two of the
15 indenture trustees on certain leverage lease transactions,
16 manufactures and Traders' Trust Company and Wells Fargo Bank
17 Northwest. We filed objections to the sale, but through, I
18 think, innocent inadvertence on the part of debtors' counsel,
19 they were not addressed in the omnibus objection by oversight.

20 This came to our attention on the eve of the hearing,
21 and we've had subsequent discussions that I think have
22 partially resolved and expect to resolve over the next week,
23 our objections. So I wanted to indicate what has been
24 discussed. I'm also here with counsel --

25 THE COURT: Tell me, Ms. Wickouski, I'm wondering how

1 much this is consistent with what I said before. If you have a
2 deal, and you're telling me that you're working it out, this
3 isn't the time that I wanted to deal with matters of that
4 character. And I don't want to be a jerk or a martinet, but I
5 am trying very hard in a case with 850 objections, to deal with
6 them in a way so that I can triage the matters before m.

7 MS. WICKOUSKI: I understand, Your Honor. And I
8 apologize. It was my misunderstanding that the indenture
9 trustees were not being heard at this time.

10 THE COURT: Well, if you're saying you've got a lien
11 and that your lien has to be addressed, and you've either got
12 to get satisfaction of the lien or a carry-through on the lien,
13 or something like that, that doesn't strike me as rising to the
14 level of controversy as a lot of the other matters that I have.

15 Now, if I'm understating your legal concerns, and you
16 want to argue a legal point, I'm not going to put a sock in
17 your mouth. But if you're telling me that you and the debtor
18 are having a dialogue that lenders and debtors have all the
19 time to address issues of this character, I applaud that, and I
20 simply say, if you want to confirm your understanding at the
21 end, when I deal with other similar confirmations, I'd be happy
22 to hear that.

23 MS. WICKOUSKI: Yes, Your Honor. And my apologies.
24 I misunderstood in terms of the course for proceedings, and I -
25 -

1 THE COURT: I understand that I don't always speak
2 with perfect clarity. And no offense intended. But certainly
3 I want to deal with it, Ms. Wickouski.

4 MS. WICKOUSKI: Understood, Your Honor. Thank you.

5 THE COURT: Thank you. Okay. Do I have any other
6 substantive objections that are actually being argued that I
7 haven't heard yet? Mr. Schulman? Mr. Mayer?

8 MR. MAYER: Yes, Your Honor. If I may. Well, this -
9 -

10 THE COURT: Oh, another asbestos objection.

11 MR. REINSEL: Your Honor, Ron Reinsel on behalf of
12 Mark Buttita. I will try not to rehash anything Mr. Esserman
13 said or anything the very eloquent Mr. Jakubowski said. I want
14 to make just a couple of points and a clarification.

15 We have objected on a number of grounds, including
16 sub rosa plan, and the extent to which the requested sale
17 extends past the bounds of 363, specifically to claims, and most
18 importantly to future claims; that they are not interests in
19 property, and a certainly that future claim that has not come
20 into existence, has not arisen, goes so far beyond the pale of
21 an "interest in property" even if that is permitted. But I
22 want to concentrate on just a couple of points that distinguish
23 this case both from Chrysler and TWA, and also the White Motor
24 case that the debtors have relied on.

25 Contrary to Chrysler, Judge, and contrary to TWA,

1 this isn't a sale of assets that will meld assets into an
2 existing business. It is, instead, a standalone, complete
3 continuation of the exact same business enterprise. It is the
4 same products; it is the same employees; it's the same
5 management; it's the same marketing; it's the same logos. And
6 to accomplish what the debtor and Treasury has indicated they
7 want is "a seamless transition in the eyes of consumers." In
8 other words, New GM is just the same Old GM.

9 Yet, they want to escape the strictures of potential
10 continuation of liability as a successor of existing GM. They
11 look -- in the order that they're going to present to you,
12 while we haven't seen any final order yet, but we've seen what
13 they're looking for. And that is complete, but not just an
14 approval of a sale, but protection from specific factual
15 findings that may lead subsequent state courts to find that
16 there is continuation of liability under relevant state law;
17 despite the fact that many of those findings fly specifically
18 in the face of the evidence that we heard here, that could well
19 lead a state court to find such continuing liability.

20 Secondly, Judge, as you noted yesterday also in that
21 order, they're looking for an injunction. And you asked if
22 that injunction didn't kind of sound like a duck -- like the
23 injunction under 524(g). Well, Your Honor, it not only sounds
24 like a duck, it quacks like a duck, it walks like a duck, it
25 flies like a duck, and leaves feathers behind it like a duck.

1 It is completely the injunction as to future asbestos liability
2 that was provided for in Section 524(g).

3 Now, aside from the discriminatory treatment that's
4 provided here, they're trying to get protections under the code
5 without complying with the code's requirements. Now, Mr.
6 Miller pointed out that this is not an asbestos case. This is
7 not an asbestos-driven case, and that they're not seeking
8 relief under -- they're not including Section 524 treatment
9 here. All of that is absolutely true. The point is, however,
10 they're trying to get equivalent relief without complying with
11 the statutory requirements. And that goes both to the ability
12 to even give the relief, as well as the effective notice and
13 due process requirements that are required in order to get that
14 relief.

15 Let's distinguish some of those cases -- the other
16 cases. White Motors, it acknowledges, found that 363 did not
17 provide a basis to sell assets free and clear of claims. And
18 it went on to find that in order to do that, however -- this is
19 certainly beyond the express statutory language -- the statute
20 says "free and clear of interest in that property."

21 Now, whether or not claims become interest in
22 property, cited in other cases. But it found that 363 didn't
23 provide that basis. We had to look to Section 105 of the code,
24 the Court's general equitable powers to make things happen --

25 THE COURT: Yes, I know. We went through that with

1 Mr. Jakubowski.

2 MR. REINSEL: All right. But here's where I wanted
3 to get with that, Judge. White Motors was decided in 1987. In
4 1994 Congress enacted Section 524(g). Section 524(g) provides
5 a comprehensive design by Congress for dealing with asbestos
6 claims specifically, both present, and more importantly, future
7 claims; looking at the unique situation that that kind of
8 injury entails, particularly that it's an insidious product, it
9 went into commerce, and it has a very long latency period, such
10 that from exposure to actually manifesting a disease, finding
11 out that you have a claim, is a matter of decades. Ten,
12 twenty, thirty, forty years. Such that those folks who will
13 develop disease, who will become claimants, are not presently
14 claimants. In fact, the nature of their potential future
15 illness is specifically excluded from the definition of a claim
16 under the Bankruptcy Code. And in fact, under 524(g) it's
17 referred to a demand.

18 The problem of recognizing of how to give adequate
19 due process to those future potential claimants, those demand
20 holders, and how to give adequate notice, because you can't
21 give them notice -- in fact, we asked Mr. Henderson -- one of
22 the few questions I asked here, was, you gave broad notice of
23 these proceedings in order to give everyone notice of their
24 rights were at issue and could be affected. But he recognized
25 that GM has 650 million dollars-worth of projected asbestos

1 liability going out over a period of at least ten years, and
2 that many of those claimants, many of those potential
3 claimants, don't presently have a disease, don't know they have
4 a claim, and that whatever publication notice was given to
5 them, wouldn't have reached them and would have done them no
6 good whatsoever.

7 In Chrysler, they kind of gave that notice issue
8 fairly short shrift. There's one -- they deal with it in about
9 two sentences on page 111 of that decision, simply holding that
10 "With respect to potential future tort claimants, their
11 objections are overruled, as those issues have been discussed.
12 Notice of the proposed sale was published in newspapers in very
13 wide circulation, and the Supreme Court has held that
14 publication of notice in such newspapers provide sufficient
15 notice to claimants 'whose interests or whereabouts could not
16 be with due diligence, ascertained'", citing to the Supreme
17 Court's decision in Mullane v. Central Hanover Bank.

18 Mullane was a trust fund case. You either held funds
19 in a trust or you didn't. This --- we're not presented here
20 with a question of we can't ascertain the location of folks; we
21 can't, with reasonable due diligence send them a specific
22 notice, such that the publication even becomes sufficient.
23 We're dealing with individual whose claim doesn't yet exist,
24 who don't know that they have rights that may be affected, and
25 won't know that for years. That's why Congress, in Section

1 524(g), provided mechanisms to provide due process to those
2 folks, by the creation of a specific representative in the
3 court.

4 Last week you were asked to appoint someone -- a
5 futures representative to look out after the interests of those
6 future folks. You declined. You said we may look at that
7 later. But the point is, there is no one here looking out for
8 their interests today. They didn't get notice of this
9 proceeding. You can't give effective notice of this
10 proceeding. And no one is representing them here. I want to
11 be clear, I am representing a single current asbestos claimant.
12 Mr. Esserman was representing single current asbestos
13 claimants. We're not advocating -- other than saying they're
14 not here, Judge, we're not here in a position where we can
15 reasonably represent their interests in this case.

16 But let me be clear about the impact of 524(g) here.
17 As we said, this is not an asbestos-driven case. There is no
18 requirement that the debtor use 524(g) here. However, the
19 point is, if they don't -- if they don't employ the processes
20 that Congress designed in that section of the code to provide
21 adequate notice, adequate due process to claimants, then you
22 don't get the protections that that section provides. You
23 don't get the injunction that they're looking for, at least as
24 to asbestos claimants. You don't get the removal of future
25 successor liability as to those asbestos claimants. It's a

1 question -- it's up to the debtor, and in this case, and the
2 buyer, to decide if they want to include those sorts of
3 relevant protections. If they don't -- protections for the
4 claimants and future claimants. However, if they don't the
5 point is, they take their chances, and you, Judge, can't give
6 them the same protections as that specific statute would under
7 the Court's general 105 equitable powers. That's all, Your
8 Honor. Thank you very much.

9 THE COURT: Thank you. Mr. Mayer?

10 MR. MAYER: Thank you, Your Honor.

11 (Pause)

12 MR. MAYER: Excuse me, Your Honor. I need thirty
13 seconds to decide -- to figure how much of what we talked about
14 last night can be put on the public record at this moment. Is
15 it possible to take a five --

16 THE COURT: How much time to you need?

17 MR. MAYER: -- take a short recess, perhaps?

18 THE COURT: Actually, since we've been going so long,
19 let's take a ten-minute recess.

20 MR. MAYER: Okay. Thank you, Your Honor.

21 THE COURT: See you back in ten minutes, folks.

22 (Recess from 10:47 a.m. until 11:10 a.m.)

23 MR. MAYER: Thank you, Your Honor. And good morning.
24 Again, Thomas Moers Mayer for Kramer Levin Naftalis & Frankel,
25 counsel to the official committee of unsecured creditors.

1 First, a housekeeping item. I'm pleased to report
2 that we can't confirm that we are fine on the GE matter; I
3 think that may be a typo. My partner at Waldorf was actually
4 with his wife at a medical facility and was able to get to us
5 and tell us he had this --

6 THE COURT: That's fine.

7 MR. MAYER: The committee is prepared to withdraw its
8 limited objection to the sale motion subject to the following:

9 First, individual committee members have forcefully
10 advocated certain of the arguments advanced in the committee's
11 limited objection, and the committee's withdrawal of its
12 limited objection is without prejudice to any position taken by
13 those individual committee members on their own behalf.

14 Second, the committee's withdrawal of its limited
15 objection is subject to the completion of the wind-down budget
16 and the sale order to the committee's satisfaction. And in
17 that connection, Your Honor, I'm pleased to report that in
18 literally the last sixteen hours, in a meeting that went until
19 I think 2 in the morning and resumed at 7, and it was handled
20 primarily for the committee by FTI's Conner and Anna Phillips
21 and two partners from my firm who are not here today, Amy Caton
22 and Bob Schmidt. Actually, Bob is here, I apologize.

23 We were able to close the substantive gap on the
24 wind-down budget. My understanding, which I would ask the
25 government to confirm is that the total amount of the facility

1 being provided to cover wind-down expenses has been upsized
2 such that the government is going to make available financing
3 in the amount of 1.175 billion dollars, Your Honor.

4 In addition, there is an agreement that asset
5 proceeds which have previously been dedicated to the repayment
6 of the government's facility will be available to fund
7 additional expenses if needed.

8 The government has agreed that asset sale proceeds
9 that were previously dedicated to the repayment of the
10 government's wind-down facility will now be available for the
11 payment of wind down expenses if needed.

12 MR. JONES: Also correct, Your Honor. And I should
13 make clear that the funding facility is on a non-recourse
14 basis, as has been the case throughout these discussions.

15 MR. MAYER: The details are still being fine tuned,
16 but those are the highlights. We also had useful discussions
17 with AlixPartners on its administration of the wind-down,
18 again, details will be forthcoming. But we believe we have an
19 agreement in principal on certain elements on that that are
20 important to us and will be disclosed at a later time when Alix
21 is prepared to come forward with its application.

22 With respect to corporate governance, there are two
23 time periods. There's a period between now and confirmation
24 and -- strike that. Consummation. And there's a period
25 between consummation and final distribution. And to be precise

1 we talked in this proceeding, Your Honor, about a sale
2 consummation, that's not what I mean here. I mean, there's a
3 period between the sale and the consummation of a Chapter 11
4 plan. And then there's a period after consummation of a
5 Chapter 11 plan. And we have agreements in principle for the
6 most part on both periods. One is ready for publication.

7 During the period from the sale until consummation of
8 a plan of reorganization, it is our understanding that the
9 board of directors of this debtor will be composed of one
10 designee from Alix, one designee from the creditors' committee.
11 And there's a third individual who the parties have agreed on,
12 but I'm not entirely sure he has agreed on it, so perhaps I
13 should keep his name confidential for the moment. But we have
14 an agreement on a person that would be acceptable to both of
15 us. And actually is quite a good pick.

16 And, again, the permanent board -- the board for the
17 post-consummation, GM -- Old GM will be in a plan of
18 reorganization and disclosure statement, itself, but we have
19 the outlines of an agreement on that as well.

20 Based on those agreements and one or two other
21 things, there was an issue that came up yesterday, about
22 workers' compensation claims in connection with the State of
23 Michigan. Our understanding is that the order or relevant
24 documents will be changed so as to have New GM bear
25 responsibility for Michigan Workers' Comp claims. Old GM will

1 not bear responsibility for Michigan workers' comp claims.

2 Does that need to be amplified.

3 MR. JONES: No amplification needed, Your Honor.

4 That description is correct so far.

5 THE COURT: Am I right in assuming Michigan has the
6 most workers and potentially the most workers' comp?

7 MR. MAYER: Mr. Henderson is nodding yes.

8 Finally, the committee reserves its rights with
9 respect to the master sale and purchase agreement and related
10 documents. As indicated by the narrative as to how late we
11 went last night, these things are still being machine, as is
12 not uncommon. And we intend to continue to work with Treasury
13 and the debtors. They fully involved us last night, we
14 appreciate that. We look forward to working with them to reach
15 a consensual resolution on these documents and we expect that
16 we will reach some if for some unforeseen reason there's an
17 issue of such moment that compels us to come back to the Court
18 we will let Your Honor know. But this is in the nature of
19 negotiating documents that we expect to reach an agreement on
20 and one that does not affect what I have said previously.

21 And if the Court has any questions, I'm happy to
22 answer them.

23 THE COURT: Just a couple. If I heard you right the
24 creditors' committee is withdrawing it's limited objection and
25 it is no longer taking the position one way or the other on the

1 tort and asbestos issues that at one time the creditors'
2 committee as a whole were taking. As of now you're just
3 leaving that to the individual advocates on both sides.

4 MR. MAYER: That's correct, Your Honor.

5 THE COURT: I sense that you folks are working very
6 hard to further narrow issues. But this is an ongoing process.
7 Is it possible for you, in consultation with other parties, to
8 figure out a mechanism to keep me informed over the next
9 several days, even though it's a holiday weekend, so that I can
10 keep my arms around where you are in that. Obviously, I don't
11 want to be ex parte. You have to figure out a mechanic to
12 notify me. Not on what's going on but when issues are buttoned
13 up, just like you reported to me now.

14 MR. MAYER: Yes, Your Honor. I think together with
15 the debtors and Treasury we can definitely do that.

16 THE COURT: Okay. Anything else at this point, Mr.
17 Mayer?

18 MR. MAYER: Well, we are withdrawing our objection so
19 we are no longer opposed to this transaction going forward.

20 THE COURT: Okay.

21 MR. MAYER: Thank you.

22 THE COURT: Thank you very much.

23 MR. MAYER: I don't want to leave any confusions.
24 The committee's papers were originally not in opposition to the
25 transaction going forward. The committee remains in support of

1 the transaction going forward. The particular objections that
2 we had to features of the order, those are withdrawn, and so
3 you can view the papers that we have filed the withdrawal of
4 those objections as being in support of the transaction.

5 THE COURT: Okay.

6 MR. MAYER: Have I neglected to -- about members in
7 the audience, people we negotiated with, if I misstated or
8 omitted anything. Thank you, Your Honor.

9 THE COURT: Thank you. Forgive me, which indentured
10 trustee do you represent, Mr. Feldman.

11 MR. FELDMAN: I represent Wilmington Trust Company,
12 the indentured trustee under the 1995 indenture and 1990
13 indentures, with bondholdings in the aggregate of more than
14 twenty-three billion. So we are the principal indentured
15 trustee in the case, with it's clear to say the largest
16 unsecured creditor constituency that will remain with Old GM in
17 this case.

18 Wilmington Trust Company also serves as the chairman
19 of the creditors committee. I will note there's been much said
20 about the equities of this case and the various parties
21 involved in the case, and about the importance of employees,
22 the importance of customers, the importance of dealers, the
23 importance of tort victims.

24 GM is an interesting case. Typically, when I stand
25 up here on behalf of bondholders, I'm standing up on behalf of

1 major financial institutions. GM bondholding are widely
2 distributed among thousands of mainstream Americans as well as
3 those financial institutions. So it was with -- in
4 consideration of our entire constituency. Some subset of our
5 constituency is represented by separate counsel. Paul Weiss
6 represents as stated in their 2019, approximate twenty percent
7 of the bondholding class. Mr. Richman according to his 2019
8 represents three bondholders -- I think three bondholders
9 aggregating, about two million of the twenty-eight billion
10 bondholders. And Mr. Parker has indicated that he is in his
11 individual capacity a bondholder.

12 We stand up here and we filed our papers on behalf of
13 those without a voice in the case. Wilmington Trust as an
14 indentured trustee believes it's his job to preserve and
15 protect the claims of the bondholder community that it
16 represents. And it is with that fiduciary duty in mind that we
17 carefully considered the transaction that was presented.
18 Wilmington Trust was not part of the team negotiating the
19 transaction. We came to this party and we got a chair at the
20 table, frankly, after the deal had been cut. And we were
21 presented with a binary choice, which is to support the sale or
22 to seek to object to the sale. And effectively as has been
23 dictated earlier, to potentially role the dice and hope upon an
24 objection to the sale that a debtor recovery for bondholders
25 was forthcoming. We took that obligation and that concern very

1 seriously. We had extensive discussions with the debtors'
2 advisors, with the committee's advisors, with the committee
3 members themselves, and with the ad hoc bondholder advisors.
4 And when I say the ad hoc bondholders I'm talking about Paul
5 Weiss and Houlihan. We reviewed the papers of substantially
6 all the parties in this case, with particular attention to the
7 papers filed on behalf of bondholders which are within our
8 constituency. And based on all of that information available
9 to us, we were of the view, and as our joinder indicates, that
10 based on all the facts available we felt that under the current
11 facts and circumstances that the sale appeared to be in the
12 best interest of the bondholders.

13 We did, however, have some particular concerns with
14 the transaction, not seeking to, frankly, to derail the sale
15 from going forward. But to ensure as Mr. Miller indicated in
16 his comments, that the sale creates a pie and it creates a
17 universe of people who are going to fight over that pie. We
18 understood that was the game when this case filed. What's
19 going to happen post-closing was there was going to be a
20 numerator and that is stock and warrants that the bondholders
21 and the other unsecured creditors are going to have discussion
22 and potential litigations over, how big the denominator was.
23 What we were fundamentally concerned with at the outset, was
24 that the size of the pie was set. We have heard today that the
25 wind-down budget issue, we had heard on the eve of this

1 hearing, that the wind-down budget was insufficient. And we
2 were concerned if the wind-down budget was insufficient that it
3 would eat into the stock and the warrants that had been set
4 aside as testified by various witnesses, was designed to be set
5 aside for unsecured creditors. We were concerned that that
6 wind-down budget would gain access to that stock and warrants.
7 And we've been told based on the representations today in Court
8 that that wind-down budget has been increased by 225 million
9 dollars. Plus the proceeds of any asset sales. And we are
10 comforted by that fact.

11 We reserve our rights to review the definitive
12 documentation in connection with that issue, and we will work
13 alongside the committee, as we have throughout this process to
14 streamline the process.

15 But with that in mind, Your Honor, and in closing --
16 and I think that Mr. Richman on behalf of his three individual
17 creditors and Mr. Parker on behalf of himself, they have the
18 ability to make informed decisions by themselves as to whether
19 or not they would like to roll the dice and potentially seek
20 alternative outcome. Unfortunately, we as -- fortunately
21 unfortunately, as a fiduciary for all these bondholders, our
22 job is to preserve and protect the value that is available to
23 bondholders under the deal. What we don't see and
24 notwithstanding Mr. Richman's very eloquent presentation, what
25 I haven't seen yet is a clear articulation of what happens if

1 this sale doesn't go forward, and, in fact, we got to planned
2 process. I think on behalf of Wilmington Trust I would say
3 it's not at all clear to me that on behalf of all the
4 bondholders that we represent that a plan process and the delay
5 attended to that plan process, would be designed to enhance the
6 recovery. Or would, in fact, enhance the recovery to
7 bondholders under this case. Frankly, it made the delay. And
8 the other issues that may be attended to a plan process could
9 very well diminish the recovery to bondholders. It's a risk on
10 behalf of our twenty-three plus billion dollars worth of
11 constituents we're not willing to take. And with that, Your
12 Honor, we withdraw our joinder subject to the reservations I've
13 indicated.

14 THE COURT: Thank you. Ms. Christian, you're the
15 other indentured trustee?

16 MS. CHRISTIAN: Yes, Your Honor.

17 THE COURT: Come on up, please. Is Law Debenture
18 Trust your client?

19 MS. CHRISTIAN: That's correct, Your Honor. Jennifer
20 Christian of Kelley Drye & Warren for Law Debenture Trust
21 Company of New York as proposed successor indentured trustee
22 for the holders of eight series of GM's bonds.

23 Your Honor, Law Debenture fully confers with the
24 committee and with Wilmington Trust, and is prepared to
25 withdraw its joinder to the committee's limited objection

1 subject to the conditions that have been outlined and with eh
2 full reservation of our rights. Thank you.

3 THE COURT: Okay. We up to --

4 MR. FRANKEL: Good morning, Your Honor. It's Roger
5 Frankel from Orrick Hamilton. I represent the GM National
6 Dealer Counsel and the committee that is formed. We also
7 represent Paddock Chevrolet that's a member of the official
8 committee.

9 I wanted just to state for the record we had filed a
10 limited objection, reservation of rights. We had been working
11 with the debtors and have been satisfied since we filed that
12 and even before we filed that that certain concerns that we had
13 have now been resolved.

14 This committee is comprised of dealers that were
15 elected by the entire dealer body as well as three members of
16 the National Automobile Dealers Association. The National
17 Automobile Dealers Association is also an ex officio member of
18 the committee. And we think it's important for the dealer
19 voice to be heard here and we are supportive that his
20 transaction move forward and move forward as quickly as
21 possible.

22 The one thing that I would add, Your Honor, I just
23 heard yesterday for the first time, the recommendation of the
24 privacy ombudsman, briefly looked at the report this morning,
25 and I would hope that GM would incorporate and Treasury would

1 incorporate the recommendations of the privacy ombudsman in the
2 sale order. Thank you, Your Honor.

3 THE COURT: Okay, thank you.

4 MS. TAYLOR: Good morning, Judge. I'm Susan Taylor,
5 I'm an assistant attorney general for the State of New York and
6 I represent the interest of the Department of Environmental
7 Conservation here today.

8 We filed an objection separate and apart from that as
9 to which Ms. Cordry has been speaking. And I am here to tell
10 the Court that we are not in the same category as many of the
11 objectors. Mr. Miller very nicely articulated the difference
12 between the State of New York and many of the objectors here.
13 We are not here about money. We are here because we are
14 concerned that there appears to be an attempt in the proposed
15 order to impair the police and regulatory powers of the State
16 of New York. And we are here to ask you not to let that
17 happen.

18 The department has an interest in being able to
19 enforce the state's environmental laws in order to protect the
20 public health and safety. That interest is not an interest in
21 property within the meaning of Section 363. And it cannot be
22 extinguished or impaired through the means of a 363 sale. The
23 whole statutory scheme and many cases make clear that
24 regulatory and police powers do not give way to the important
25 interest protected by bankruptcy law. To the extent that there

1 are provisions in the order that are still overly broad, and
2 one of those is still, in for instance, paragraph T, although I
3 confess that I have not this morning seen what may be an order
4 that has changed. But to the extent that there is still
5 language in there that appears to extinguish or impair the
6 right of the state, to enforce its regulatory and police order,
7 we ask the Court not to let that happen.

8 In the State of New York two sites are not being
9 transferred, are not going with New GM. One of them is Messina
10 GM, which is a national priorities list superfund cite in the
11 northern part of the state. It is adjacent to tribal land. It
12 has serious contamination and has in place consent and
13 administrative orders of the Department of Environmental
14 Conservation. It came to our attention only on Friday that
15 there appears to be another site that has contamination that
16 may also be excluded. It's a little unclear from the schedule,
17 we've been unable to get clarification as to whether that site
18 is, in fact, not being transferred. And we are very concerned
19 about the department's abilities to continue to protect the
20 health and safety of the people of New York through consent
21 orders, administrative orders, and the ability to impose
22 injunctive relief, with respect to those and other sites.

23 If you would like to argue that the state's interests
24 are not interest in them I would be happy to do that. I think
25 that is clear. But to the extent that the Court?

1 THE COURT: You have a brief on file, don't you?

2 MS. TAYLOR: We do have a brief on file and I would
3 refer to the cases cited in the brief on that. If you
4 disagree, however, we would ask you to condition a sale
5 pursuant to 363(e) in order to protect the state's ability to
6 enforce its police and regulatory powers. And we have language
7 that we have circulated to GM and its counsel over the past few
8 days that we would like to see added to the order. I would be
9 happy to submit that to the Court anytime today if you would
10 like that.

11 Essentially, it would provide "that nothing in the
12 order would release, nullify, enjoin, or otherwise affect the
13 police and regulatory authority of any governmental unit or its
14 ability to enforce." And, of course, being lawyers it goes on,
15 but that is its essence.

16 THE COURT: If it's consensual by all means. If I
17 have differing proposal on that, I need to get yours in writing
18 and the debtors' perspective and argument. The debtors'
19 perspective as to the language they think makes the most sense
20 in writing if it's different than what I have now. And if
21 you're not in consensus obviously you need to get argument on
22 both.

23 MS. TAYLOR: Happy to do that, Judge. At this point
24 I cannot represent that it is consensual. If you don't have
25 any questions, I will rest on our papers.

1 THE COURT: Thank you.

2 MS. TAYLOR: Thank you.

3 THE COURT: Okay. Mr. Roy, you're coming up.

4 MR. ROY: I'm coming up in thirty seconds, Your
5 Honor.

6 THE COURT: Okay.

7 (Pause)

8 MR. ROY: Your Honor, for the record, Casey Roy from
9 the Texas Attorney General's Office on behalf of the State of
10 Texas.

11 We filed a limited standalone objection. We've
12 reached an agreement with the debtors, subject to entry of that
13 agreement on the record, we will be prepared to withdraw.

14 THE COURT: Okay.

15 MR. ROY: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. MOTIF: I'm not an attorney. I'm coming to
18 you --

19 THE COURT: Just a minute. Is there -- I announced
20 earlier in the hearing that I wasn't going to hear oral
21 argument on all the objections. Come up, tell me your status
22 so I can make a judgment as to whether you should be resting on
23 your papers.

24 MR. MOTIF: My name is Normaji, last name is Motif.

25 We bought GM's bonds, 400,000 paying the same amount.

1 And I --

2 THE COURT: Sir, you're a bondholder?

3 MR. MOTIF: Yes, sir. Unsecured.

4 THE COURT: Unsecured bondholder. Do you have any
5 points that weren't made by either Mr. Richman, Mr. Parker or
6 the two indentured trustee?

7 MR. MOTIF: That's correct.

8 THE COURT: And you filed a written objection.

9 MR. MOTIF: I did, but I want to make this.

10 In the master purchase and sales agreement they never
11 really splintered the phrase going concern. As a grave concern
12 this needs to be sorted fast enough so that the value doesn't
13 go down. I'm not sure whether they're talking about the legal
14 term of grave concern or the accounting term of grave concern.
15 No matter whether we go on the legal term or the accounting
16 term, that phrase cannot be used. GM operations like the
17 (indiscernible) cooperation which I read the (indiscernible)
18 very frequently they use of the word grave concern. They took
19 operations and cooperated in Delaware. And Delaware's
20 (indiscernible) law with regard to the cooperation applies.
21 Even if this case is filed in New York State I would like the
22 Court to take analyze that usage of the going concern as a
23 property of (indiscernible). I can understand that it's an
24 operating concern, they will be borrowing money and running the
25 business. But definitely it is not a grave concern whether it

1 is a legal usage or accounting usage.

2 The (indiscernible) cooperation -- I mean, the GM
3 cooperation whether you want to use the title GAAP. GAAP means
4 the general acts of accounting principals, or you want to use
5 the fair market values of some of the methodology that you use.
6 The corporation became insolvent three year ago. And since
7 then especially with the loan agreement signed by the Treasury
8 it seems that even though they have created documents stating
9 that this is the loan agreement, actually nobody, if
10 especially, if the government is going to be approving
11 commercial businessman would never lend money. So the
12 expectation was a situation created and not a reality. And you
13 have seen what Mr. Henderson and Mr. Wilson and others saying
14 that if the loan never came through then GM could not have
15 functioned, like what happened in the case of Chrysler.

16 Now, there are rules in the corporation's law of
17 Delaware saying that at a particular stage if the money was
18 lent not as a businessman but for other reasons, and especially
19 if control of the corporation has been taken over indefinitely,
20 then that entity should be treated as insiders. And so,
21 therefore, the loans must be subordinated to the equity and to
22 the unsecured bondholders. Because it would not be treated as
23 a loan as a creditor, but would be treated as insider, and so
24 therefore it is a capital contribution.

25 The important reason for that is if that is the

1 capital contribution and not a law then --

2 THE COURT: The recharacterization subordination
3 points were made in many briefs, I understood them.

4 MR. MOTIF: I'm ready to come to the other important
5 point.

6 If the Court determines that it is a capital
7 contribution and not a loan per se, then the participation
8 fails because in the proposals out of 19.4 billion dollars that
9 was the pre-petition advances made, two million dollars worth
10 of (indiscernible) being taken by the New GM with approximately
11 about eight billion dollars of (indiscernible) and so that
12 leaves about nine million dollars as the big money so there
13 will be a shortage in the bid amount, even if you include the
14 DIP money less the other things. I believe that this money was
15 given here, that the total purchase price of the total value
16 was between fifty and sixty billion dollars. If that is the
17 case then it is my submission that the Treasury bring down that
18 nine million dollars and give it to the Old GM as part of the
19 purchase price. Plus also the eight billion dollars for eight
20 million dollars of the note, plus two billion dollars that also
21 must come for a total of 19.4 billion dollars, must come to the
22 Old GM.

23 Now, the other argument is that --

24 THE COURT: Are you getting near the end, sir?

25 MR. MOTIF: Yes, give me five minutes.

1 THE COURT: Five more minutes.

2 MR. MOTIF: Yes. Because this is a very crucial case
3 and I need to explain that clearly. May I proceed?

4 THE COURT: Yes.

5 MR. MOTIF: Now, I raised an issue that as an
6 unsecured bondholder there is a breach of contract by GM when
7 they --

8 THE COURT: GM has breached its contract to everyone
9 of its twenty-eight --

10 MR. MOTIF: I know, I know. But I'm coming to the
11 final points, Your Honor. There were secured bondholders and
12 there were unsecured bondholders, you've got two categories
13 before September 31 of 2008. I do not know that the secured
14 bondholders are fully secured or partially secured. And I have
15 no idea as to what properties are fully secured, or partially
16 secured by the secured bondholders. Now, when they borrowed
17 13.4 billion dollars from the Treasury they put a first lien on
18 the property, which is not covered by the secured bondholders.
19 And with regard to the secured bondholders property they put a
20 second lien. The document indenture of 1995 is clear that the
21 moment a lien is put then the unsecured bondholders must be
22 repeated on par with the --

23 THE COURT: Is that the exact point Mr. Parker made?

24 MR. MOTIF: No, I'm going to go further, Your Honor.
25 He made one point, but he did not elaborate more.

1 Accurately, he admitted in his brief that they
2 realized this lien problem. So if you read the brief he
3 acknowledges my brief --

4 THE COURT: I did read his brief.

5 MR. MOTIF: Pardon?

6 THE COURT: I did read his brief.

7 MR. MOTIF: Yeah. And he acknowledges that he got
8 the idea from me.

9 THE COURT: Okay.

10 MR. MOTIF: Here is the question. I read the
11 Chrysler opinion by Judge Gonzalez. He said with regard to the
12 unsecured creditors the takings clause -- and I think he said
13 might apply because they don't have a lien. But if this Court
14 were to decide that the fact that a lien was put on that and
15 that automatically triggered the other problem which is that
16 the unsecured bondholders also has liens on par with the
17 treasury, both with regard to the first lien that decided with
18 regard to the other property, and the second lien that decided
19 on the secured bondholders' property. Then we have a right to
20 argue that the takings clause under the Fifth Amendment do
21 apply.

22 So with that, Your Honor, thank you very much.

23 THE COURT: Thank you. Now, putting aside deals on
24 the record and so forth, which we can deal with later, is there
25 any other substantive argument of a non-duplicative nature to

1 be heard? Sir?

2 MR. CHEEMA: Your Honor, good afternoon. Bik Cheema,
3 Baker Hostetler on behalf of the Bureau of Ohio Workers'
4 Compensation.

5 THE COURT: Ohio Workers' Comp.

6 MR. CHEEMA: Yes. It's OBWC. We filed a limited
7 motion, we don't oppose the sale. The limited motion was the
8 OBWC reads the sale motion as indicating that New GM intends to
9 assume all the debtors' Ohio workers' compensation obligations.

10 In the last few hours we've reached an agreement on
11 some clarifying language with the U.S. Treasury, and we wish to
12 just offer that clarifying language for the record. It will
13 literally take thirty seconds.

14 THE COURT: Thirty seconds, it will take longer for
15 me to tell you to sit down and comply with what I said before.
16 So go ahead.

17 MR. CHEEMA: "Pursuant to the master sale and
18 purchase agreement, New GM is assuming all of Old GM's
19 liabilities and obligations, under the workers' compensation
20 laws, rules and regulations of the State of Ohio. OBWC reads
21 the provision to include the assumption by New GM of Old GM's
22 obligation to provide and to continue to provide security for
23 the payment and performance of all obligations under the
24 workers' compensation laws, rules and regulations of the State
25 of Ohio owed by Old GM. New GM will be required to apply for

1 status as a self-insuring employer in the State of Ohio. If it
2 seeks such status and nothing in the Court's order approving a
3 sale shall exclude New GM from satisfying all requirements and
4 conditions, including any requirement to provide security of
5 the OBWC to grant self-insuring employer status under
6 applicable Ohio law, rules and regulations."

7 THE COURT: Okay.

8 MR. CHEEMA: Thank you, Your Honor.

9 THE COURT: All right. Mr. Miller, are you ready
10 for -- sir, is this an objection, further argument, non-
11 repetitive argument?

12 MR. KANSA: This is a non-repetitive very brief
13 argument, Your Honor.

14 THE COURT: All right, come on up.

15 MR. KANSA: Good morning, Your Honor. Kenneth Kansa,
16 Sidley Austin on behalf of the TPC Lender Group.

17 The TPC Lender Group is a consortium of nine
18 commercial lenders with first priority liens on two of the
19 debtors' facilities, one in White Marsh, Maryland and the
20 second in Memphis, Tennessee.

21 Your Honor, we filed a limited objection to the sale
22 transaction. We are in the process of working on language that
23 we hope will resolve that objection, but we haven't dotted the
24 I's and crossed the T's yet. The only point I would raise in
25 addition to our papers, Your Honor, is in rebuttal to some of

1 the points that the debtors have made in their reply about our
2 limited objection, which really seeks to characterize this as a
3 garden variety secured creditor 363(f)(3) issue; where on the
4 one hand you have is it the value of the collateral, on the
5 other hand, is it the face amount of the lien. We think in
6 this context, Your Honor, that misses the point. There is only
7 one value on the table here today. That is the amount of the
8 lender's allowed secured proof of claim on file at 90.7 million
9 dollars. The debtors have stated that they will settle for a
10 purchase price in excess of the value of all liens on the
11 property, that's their obligation under 363(f)(3), and that's
12 the subsection they rely on to sell the facilities. Our point
13 is simply in response, no purchase price has been specified, no
14 value has been allocated. The only value that is out there is
15 the value of the claim in our secured proof of claim. And the
16 only value out there is --

17 THE COURT: You're saying that if you say that your
18 collateral is worth a certain amount it's binding on the world?

19 MR. KANSA: I'm not saying it's binding on the world,
20 Your Honor. I'm saying if they are going to rely here today on
21 363(f)(3), saying that they are selling in excess -- for our
22 purchase price, in excess of the value of our liens, that is
23 what the value of the liens is. Today there is no other
24 competing value out there. There's nothing in the record.

25 THE COURT: You'll agree that sometimes there is a

1 difference between the amount that people claim in their proofs
2 of claim as secured claims, and the value of their collateral.
3 And that the actual value of the secured claim is measured by
4 the value of the collateral and the remainder is unsecured, I
5 assume.

6 MR. KANSA: No disagreement, Your Honor.

7 THE COURT: Okay. So basically the issue to the
8 extent there is an issue, is that you're claiming an amount
9 which the debtor and other parties in the case, probably every
10 single other party in the case, might have a difference in
11 perception from you and might say that your secured claim is
12 measured by the value of your collateral. But the remainder of
13 your claim is unsecured.

14 MR. KANSA: That's true, Your Honor. But the point
15 is there is no -- no one has articulated their belief as to the
16 other value here today.

17 THE COURT: I understand your argument.

18 MR. KANSA: Thank you, Your Honor.

19 THE COURT: All right. Are we now ready for Mr.
20 Miller? No, one more.

21 MR. WISLER: Good morning, Your Honor. Jeffrey
22 Wisler on behalf of Connecticut General Life Insurance Company.

23 Your Honor, I have a non-resolved, non-cure executory
24 contract objection. Would you like to hear that now, Your
25 Honor.

1 THE COURT: If it's an objection I think I would.

2 MR. WISLER: Understood. Your Honor, Connecticut
3 General Life Insurance, also known as CIGNA provides a range of
4 healthcare administrative services to GM and administers GM's
5 self-insured employee healthcare benefits plan for thousands of
6 its employees.

7 CIGNA's objection isn't just critical to CIGNA, it's
8 critical to GM, New GM and it's employees because we want to
9 make sure that the debtors attempt to assume and assign the
10 arrangement it has with CIGNA gets the job done and assures
11 that the employees of New GM will have the benefits that they
12 currently have now with Old GM. So while we do have a cure
13 objection I understand that will be deferred.

14 Today's objection is more fundamental. And that is
15 that the debtor has not given CIGNA or this Court what is
16 necessary for this Court to approve the assumption and
17 assignment of agreement. And there's three fundamental
18 problems, Your Honor. First is, the debtor in its contract
19 notices identified what appeared to be eight separate contracts
20 relating to CIGNA, but with no detail that we can comprehend.
21 It simply has vendor numbers, contract numbers, row numbers, I
22 don't know what those are. CIGNA has looked at these, they're
23 sophisticated business people, they don't know what these are.
24 And we haven't received any clarification on what they are.
25 Except that GM intends to assume and assign all of the CIGNA

1 contracts. Well that's meaningless also because we need to
2 know what they are, we need to make sure what we think is all
3 and what they think is all, is the same thing. Because, in
4 fact, CIGNA's position is that there is one overriding
5 contract, it's an administrative services contract. And under
6 that are addendums, and riders, and amendments that encompass
7 all of what CIGNA does for GM and its employee benefit plan.

8 So to warrant this Court's approval of the assumption
9 and assignment of that agreement, the debtor needs to formally
10 and unequivocally identify that contract and say to the Court
11 and to CIGNA, this is the contract we intend to assume and
12 assign.

13 THE COURT: Pause please, Mr. Wisler. What extent
14 did you or any of your guys pick up the phone and have a
15 dialogue with the debtor to kind of exchange information and
16 get answers to each of those concerns?

17 MR. WISLER: Both sides have done that, Your Honor,
18 it is not yet resolved.

19 THE COURT: And help me understand the problem,
20 because this stuff is done all the time. I didn't hear you
21 accusing the debtor of cherry picking or trying to split apart
22 the master agreement, am I right that that's not your concern?

23 MR. WISLER: Given the debtors' statement that it
24 wasn't to assume all of our contracts, I will assume that is
25 not the case.

1 THE COURT: All right. Forgive me, but I know a
2 little bit about this area, and I still can't understand the
3 problem.

4 MR. WISLER: Well, Your Honor, if a debtor comes to
5 the Court and does not identify the contract it wishes to
6 assume and assign, I don't think the Court can permit that
7 assumption and assignment.

8 THE COURT: Assuming arguendo that you're right, I
9 mean after you had the dialogue with them you're saying they
10 didn't tell you what contracts they wanted to assume and
11 assign?

12 MR. WISLER: Not to any specificity that anyone could
13 use to identify these agreements.

14 The fundamental problem, being number one, that we
15 think there's one agreement and they think there's more than
16 one.

17 THE COURT: But if the agreement with all of them
18 what difference does that make?

19 MR. WISLER: If two parties don't agree what all
20 means or, more specifically, if one party believes there's one
21 and one party believes there's multiple agreements, I don't
22 think there's a meeting of the minds, Your Honor. And I'm
23 certainly not standing up here saying this is not a resolvable
24 problem. Today's the day for the sale hearing, today's the day
25 we have to present our objection. We've attempted to come to a

1 resolution, we may actually be close to a resolution. But
2 because we're not at a resolution I need to present this
3 objection to the Court.

4 THE COURT: Okay. Make your remaining points.

5 MR. WISLER: Understood, Your Honor.

6 THE COURT: And then I'll hear your adversary.

7 MR. WISLER: Secondly, Your Honor, there are two bank
8 accounts that make this plan work for GM and its employees.
9 And these bank accounts have authorization approvals between GM
10 and CIGNA. And there has been no confirmation and no reference
11 to it in the APA or the form of order and the motion that those
12 authorizations will continue. If they do not continue the
13 self-insured plan that CIGNA administers will not work because
14 there will be no money passing from one account to another to
15 pay employee benefit claims, employee healthcare claims.

16 So, again, until that is unequivocally and formally
17 confirmed we don't think any contracts, any of this particular
18 contract that CIGNA has with GM can be assumed and assigned.

19 And, third, Your Honor, and very importantly, nowhere
20 in the APA or the proposed form of order, or the motion, is
21 there confirmation that New GM will be responsible for
22 claims -- healthcare claims -- employee healthcare claims that
23 were incurred prior to closing but will not be processed and
24 paid until after closing. That's very important because as
25 claims come through a system they come through at different

1 times. If someone goes to the doctor last week, the doctor may
2 take some time to submit the claim to the insurance company,
3 the insurance company has to process it. If it's approve it's
4 then paid. That takes time. There is no way to draw a bright
5 line on a closing date and say hey, these claims are not going
6 to be paid, these claims aren't. It's not a cure issue, it's a
7 question of is New GM going to take responsibility for paying
8 those claims that were incurred prior to closing.

9 My understanding with the discussions with the debtor
10 is yes, they are. But, again, that ahs not been --

11 THE COURT: I've encountered this issue over the
12 years. Whether you have to slice and dice whether a claim is a
13 pre-petition claim or post-petition claim. But I've never
14 encountered it with the context of the assume and assign,
15 because it envisions a smooth transition. Has your dialogue
16 led you to believe that there's some difference in perception
17 on this one?

18 MR. WISLER: No, Your Honor, that's what I was just
19 saying. My dialogue with the debtor indicates that this --
20 that it is New GM's intent to just continue to pay claims in
21 the ordinary course of business regardless of when they were
22 incurred. But, again, that has not been formalized, it has not
23 been unequivocally stated. Today's the day I have to present
24 this objection. If it's not formalized or unequivocally
25 stated, we have a problem is we go into closing and we don't

1 know the answer to that question. So our simple request for
2 relief is, Your Honor, do not approve assumption and assignment
3 of the CIGNA agreement until the debtor formally and
4 unequivocally clarifies those three points.

5 THE COURT: Thank you, Mr. Wisler.

6 MR. WISLER: Thank you, Your Honor.

7 THE COURT: Mr. Smolinsky, you're rising. Is this
8 just to respond to what Mr. Wisler said?

9 MR. SMOLINSKY: Yes, it is.

10 THE COURT: Sure, come on up.

11 MR. SMOLINSKY: Your Honor, again, Joe Smolinsky from
12 Weil Gotshal.

13 I'm not sure if Mr. Wisler is in communication with
14 his client. We are aware of the CIGNA situation. Seth Drucker
15 of Honigman Miller has been working with Janice Heulig, who is
16 the head of HR at GM. I've received no fewer than a dozen e-
17 mails over the last forty-eight hours specifically with respect
18 to CIGNA. We are assuming the CIGNA contracts. We have
19 provided them with the -- with a lot of information. In fact,
20 Jay Manor, an employee of GM who is on vacation this week, came
21 back to the office to put together the documents that CIGNA has
22 requested. There are bank accounts that need to be moved, the
23 company is in the process of moving those bank accounts.

24 As I understand it, CIGNA has requested execution of
25 a variety of documents. Consent agreements and other documents

1 which other of our suppliers, such as Medco who provide a
2 similar service, has not requested. I haven't reviewed those
3 document yet to the extent that they are not problematic we
4 will provide them with the assurances they need. But to the
5 extent that CIGNA does stand in our way of closing and
6 transferring the employee benefits we will be back in front of
7 you, Your Honor.

8 THE COURT: All right, thank you. Okay. Can I now
9 get to debtor reply.

10 MR. MILLER: I hate to disappoint you, Your Honor,
11 but the U.S. Attorney has asked to go first.

12 THE COURT: Sure, Mr. Jones.

13 MR. JONES: Thank you, Your Honor. We thought it
14 appropriate to let GM have the last word, and so we'll have a
15 short summation first.

16 First, Mr. Schwartz is going to address,
17 particularly, Your Honor's consent decree question, and then
18 I'll have remarks on additional issues.

19 THE COURT: Sure. Mr. Schwartz.

20 MS. CORDRY: Your Honor?

21 THE COURT: Ms. Cordry?

22 MS. CORDRY: Yes, sir. Karen Cordry from National
23 Association of Attorneys Generals.

24 We've been working with the debtors late into the
25 night and this morning, and all this time. I think we're at

1 close to an agreement. But the discussion we've been having
2 with them when we had the terms in the order we would be able
3 to say we have a resolution that I am still in the process of
4 getting all the attorneys general to sign on to that. If it
5 didn't then we would be in position to weave our objections on
6 the record, if the order is not done. I didn't realize I was
7 momentarily distracted, we got it in of everybody else there.

8 I think we are very close to having that. I guess I
9 would just like to reserve my right to state where that whole
10 position is. I don't want to necessarily hold up all this.
11 And I don't think anything I would say with that would
12 necessarily require them to have any different rebuttal than
13 they would have.

14 THE COURT: What's your recommendation, Ms. Cordry,
15 do I let Mr. Schwartz or Mr. Miller speak? Maybe you'll have
16 the answer again. Otherwise, I assume that on issues that
17 haven't been resolved to your satisfaction I have your papers.
18 But I also sense that you're so close to the go line that
19 you're saying it might help me to do my job if you have some
20 news to report to me.

21 MS. CORDRY: Yes. I think in the same way that you
22 were saying that other people were trying to work towards
23 reporting, I hope I'm going to be in that position as soon as I
24 hear back their last couple of words or two on that page.

25 THE COURT: Let's agree that as of this point the

1 train hasn't left the station. If you need to be heard after
2 everybody else is done, I'll give you that chance, subject to
3 anybody else's rights to express a different view if you need
4 to.

5 MS. CORDRY: Okay. And when I do that I would
6 certainly keep in mind Your Honor has heard a great deal on a
7 great many topics that we had in our papers.

8 THE COURT: Yes. I've also heard capable arguments.

9 MS. CORDRY: Exactly, every capable arguments, far
10 beyond what I was probably planning on doing. So anything that
11 I would say would be specifically on very short points and
12 other issues that people definitely have no raised to this
13 point. So thank you, Your Honor.

14 THE COURT: Okay.

15 MR. MILLER: Your Honor, there will be one other
16 speaker. I understand that the UAW would also like to speak.

17 THE COURT: Is this a good time, or would the UAW be
18 speaking after the U.S. and the debtor?

19 MR. MILLER: After the Treasury, Your Honor.

20 MR. SCHWARTZ: Why don't I make my remarks which will
21 take about a minute, and then Mr. Jones and Mr. Bromley can
22 discuss their order.

23 I just wanted to address -- Matthew Schwartz for the
24 United States, the questions Your Honor asked about
25 environmental consent decrees because, of course, we're here

1 representing the United States, including the Environmental
2 Protection Agency.

3 Your Honor asked two specific questions, I'd like to
4 quickly provide answers and then suggest why it is you don't
5 have to answer those questions yourself today on this motion.

6 First, I heard the Court ask yesterday whether an
7 environmental consent decrees is a contract -- an executory
8 contract that can be rejected by a debtor in bankruptcy. As
9 Mr. Bernstein said, a consent decree has features of contract
10 and features of order. But I think the law is relative clear
11 that they are not executory contracts that can be rejected. I
12 would point you to Judge Coudle's (ph.) opinion in New York v.
13 Mirant. That's at 300 B.R. 174 at page 181.

14 The further question that Your Honor asked today, I
15 think the important question, is whether a consent decrees is,
16 therefore, enforceable against the debtor. And as Your Honor
17 said that turns on whether the consent decree creates a
18 monetary or injunctive obligation. Whether it embodies a claim
19 within the meaning of the Bankruptcy Code that's Chateaugay in
20 the Second Circuit, Trouweko in the Third Circuit. That is a
21 remarkably fact-intensive inquiry. And the fact --

22 THE COURT: Depends on what the decree actually says.

23 MR. SCHWARTZ: That's right. And I've only skimmed
24 the consent decree that Mr. Bernstein was speaking to, but I'll
25 make the general comment that simply because the obligations of

1 the debtor under a consent decree are to pay money does not
2 necessarily mean that it is a claim within the meaning of the
3 Bankruptcy Code. I think that's enough for today's purposes.
4 Because ultimately the objection that Mr. Bernstein raised is
5 not an objection to the sale. His consent decree is either
6 enforceable against GM or it isn't. So that obligation will
7 either be treated as an unsecured claim, or it will be
8 enforceable and so they will have to pay in full. But either
9 way, the claim is against OldCo. The claim is not against
10 NewCo. There's no basis, as Mr. Bernstein suggests, to go into
11 the MSPA and rewrite excluded liabilities to add his consent
12 decree. That's the only issue on today's record. And so Mr.
13 Bernstein's objection should be denied and we can take up the
14 more substantive issues on a --

15 THE COURT: To be denied without prejudice to his
16 raising it in a different context against OldCo.

17 MR. SCHWARTZ: Against OldCo, correct.

18 THE COURT: Okay.

19 MR. SCHWARTZ: Against NewCo it's just essentially
20 the successor liability issue.

21 THE COURT: Okay. All right, Mr. Jones?

22 MR. JONES: Thank you, Your Honor.

23 Your Honor, the government simply is not sacrificing
24 principles for expediency as it has been accused of doing. Far
25 from it. We are using established law to purchase assets full

1 stop. Specifically, the government sponsored purchasing entity
2 is purchasing the pieces necessary to operate the strongest
3 possible New GM. This is a liquidating estate, there's no
4 dispute about that. There is no alternative and no scenario in
5 which this bankruptcy proceeding ends in anything other than
6 some form of liquidation. And as in any liquidation
7 proceeding, the goal is to maximize recoveries and
8 distributions to the estate and its creditors.

9 So what is before the Court today is simply an asset
10 sale. It's not a plan. What is before the Court does not
11 dictate anything about the treatment of any creditor going
12 forward in the bankruptcy proceedings which will remain in
13 place. The evidence is clear that this sale achieves far and
14 away the highest possible recovery for the assets being sold.
15 And as is salient for legal purposes, vastly in excess of their
16 liquidation value which is the only legally relevant or
17 possible alternative scenario.

18 The evidence also shows that the opportunity to
19 achieve value through the sale is fleeting. And that the
20 achievable value of this -- of any portion of General Motors is
21 fragile and soon will be lost if not seized now.

22 There will be a plan as this case progresses. Again,
23 the case will go forward and there are mechanisms to ensure the
24 estate will remain administratively solvent and funded through
25 an orderly wind-down process. And the Court's well established

1 procedures under the Bankruptcy Code will provide the framework
2 for determining the respect of recoveries for all parties-in-
3 interest

4 Your Honor, the evidence is unambiguous and
5 un rebutted that the government has no intention of funding this
6 deal if an order is not in place by July 10th. Mr. Richman
7 speculates that the government doesn't really mean it, and that
8 the government will fund beyond that date if Your Honor just
9 calls our supposed bluff. But, Your Honor, speculation does
10 not trump evidence. There is no evidence of bad faith and
11 there is no evidence undermining what the government has
12 plainly stated in Court during these proceedings.

13 To the contrary, Mr. Wilson was extraordinary
14 forthright and he explained compellingly and without hesitation
15 what steps the government has taken in regards to General
16 Motors so far. And the reasons for those actions. And its
17 plans for its future actions with regard to New GM.

18 Your Honor, the gamble that Mr. Richman asks the
19 Court to take would be extraordinarily risky and contrary to
20 the best interest of the estate. In fact, he concedes that the
21 risk he asks the Court to take today would, in fact, breach the
22 fiduciary duty if undertaken by GM itself. It is clear that the
23 Court cannot require a lender to lend. It is clear that the
24 Court cannot compel a buyer to buy.

25 This transaction is certain. It is here today. It

1 is extraordinarily favorable, and it is the only one insight.
2 The purchase fully complies with all applicable law, including
3 Section 363 of the Code. The Second Circuit just recently in
4 Chrysler heard these issues squarely, and intensively argued to
5 it in an appeal from Judge Gonzalez's decision which also fully
6 considered the very arguments here today. And of course Judge
7 Gonzalez explicitly adopted and followed TWA, the Third
8 Circuit's decision in TWA and has, in turn, been affirmed by
9 the Second Circuit for the reasons Judge Gonzalez stated. That
10 TWA order, just as the Chrysler order, expressly affirmed a
11 sale free and clear of claims, both known and unknown, and it
12 further enjoined claims in the future being brought against the
13 purchaser of the assets.

14 Your Honor, the -- I know Your Honor's made reference
15 to reading the transcript of arguments before the Second
16 Circuit, and I will not undertake here a detailed exegesis of
17 the interlocking provisions of the Bankruptcy Code. But I will
18 note that Fiat's counsel did an extraordinarily abled job of
19 doing just that in arguing before the Second Circuit. So, for
20 my purposes today, Your Honor, I'll limit myself to saying the
21 case law is very clear and establishes that exactly what is
22 happening here today is permissible and entirely authorized by
23 Section 363.

24 So -- and, Your Honor, in addition to being law, case
25 law that, at a minimum under principles of stare decisis,

1 supports the relief sought today, the ruling was correct on its
2 own terms, as shown in ours and GM's papers, and that ruling
3 simply controls here.

4 Your Honor, I won't elaborate, although -- and go
5 into --

6 THE COURT: That ruling being Chrysler, you're
7 saying?

8 MR. JONES: I'm sorry?

9 THE COURT: That ruling being Chrysler?

10 MR. JONES: Correct, Your Honor. And through
11 Chrysler, because it expressly adopted TWA, TWA's analysis as
12 well.

13 THE COURT: Um-hum.

14 MR. JONES: Your Honor, I'm not going to go into
15 detail on objections. I expect that Weil will address those
16 very ably, more than ably. I want to take a moment to thank
17 the extraordinary assistance provided throughout these
18 proceedings by the Cadwalader who is not authorized to
19 represent the government in court but has done a fantastic job
20 of supporting us in our endeavors and in serving the government
21 as a whole. And, Your Honor, in closing, let me simply urge
22 the Court that for the reasons stated and supported by the
23 evidence presented to the Court over these three days, the
24 Court should grant the 363 sale motion. Thank you.

25 THE COURT: Thank you.

1 Sure, Mr. Schein, come on up.

2 MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can
3 have his final comment, I'm not adding any further comments as
4 to Export Development Canada's position. First of all, for the
5 record, Michael Schein, Vedder Price, on behalf of Export
6 Development Canada for the governments of Ontario and Canada.

7 I just want to clarify one legal point that was
8 raised yesterday by Mr., I believe, Jakubowski with respect to
9 an argument that he said was that if the DIP lenders exercise
10 their rights under the loan agreement come the July 10th
11 milestone, not defer their fund, he made a statement that that
12 would be an implied breach of covenant of fair dealing and good
13 faith and that maybe that would give rise to a contract claim
14 by the committee.

15 I'd just like to give the Court a cite that expressly
16 rejects that argument so the Court's aware that if that right
17 is exercised. Specifically, Your Honor, it is Mirax Chemical
18 Products Corp. v. First Interstate Commercial Corp., and Eighth
19 Circuit Court of Appeals Case, 950 F.2d 566. And just one
20 statement. The Court said that that duty, which was the duty
21 of good faith and fair dealing, however, cannot be breached by
22 actions that are specifically authorized in an agreement.
23 That's just the one clarification, Your Honor. Thank you.

24 THE COURT: Thank you.

25 Mr. Bromley?

1 MR. BROMLEY: Thank you, Your Honor. James Bromley
2 of Cleary Gottlieb on behalf of the UAW. Just want to make one
3 particular point before I ceded to Mr. Miller, which is, to
4 address Mr. Richman's issue as opposed -- as it relates to the
5 linkage between the collective bargaining agreement and the
6 VEBA. Mr. Richman made a fair amount of hay out of a lack of
7 linkage, as he said, in the documents and in the evidence. But
8 I think it's important to look at the evidence. What we have
9 here is testimony from Mr. Henderson that if there was no VEBA
10 there would be no collective bargaining agreement, and with no
11 collective bargaining agreement there would be no workforce.

12 We have testimony from Mr. Wilson, again, saying if
13 there was no VEBA there would be no collective bargaining
14 agreement and, again, without a collective bargaining
15 agreement, no workforce.

16 Mr. Curson's declaration said exactly the same thing.
17 The exhibits to Mr. Curson's declaration, the ratification
18 summary at Exhibit 1 -- Exhibit A, I'm sorry, at page 1 and
19 page 11 made it crystal clear that when the UAW membership was
20 voting, they were voting on both the VEBA and the collective
21 bargaining agreement. And as Mr. Curson said unequivocally, it
22 was a single vote, up or down, for both.

23 Exhibit B to Mr. Curson's declaration is the white
24 book, the white book which contains the amendments to the
25 collective bargaining agreement. It makes absolutely clear

1 that the VEBA and the modifications are part of the collective
2 bargaining agreement that appears at page i, which says that
3 the ratification is on the terms of the ratification, that
4 single vote up or down.

5 And the addendum relating to the changes to the VEBA
6 appears at page 169 of that white book, and it is indeed part
7 and parcel of the amendments to the collective bargaining
8 agreement.

9 And this shouldn't come as any surprise to the
10 objectors. It's not new. Indeed, of all the information
11 that's been provided to the Court, this is probably the least
12 new because there is a full paragraph in the Chrysler opinion
13 going directly to this point where Judge Gonzalez found that
14 there is unequivocal evidence presented in the Chrysler trial
15 by Mr. Curson as the witness that there was direct linkage,
16 there was clear and unequivocal value being presented to the
17 new company and that the value of the VEBA was receiving was
18 not being received by the old company but indeed by the new
19 company.

20 In addition, the UAW is an express third-party
21 beneficiary of the master sale and purchase agreement. That
22 agreement requires that the collective bargaining agreement be
23 assumed and assigned. It requires that the VEBA be entered
24 into by the new company. These are unwaivable conditions to
25 closing.

1 In addition, Section 7.4(h) of the DIP says that
2 unless by July 10 the agreement, the master service sale and
3 purchase agreement, is approved, that there'll be an event of
4 default under the DIP. That includes all of the related
5 documents, and the UAW retiree settlement agreement in Schedule
6 1.1(e) to the DIP is one of those agreements.

7 So, Your Honor, I think that the record is replete
8 with evidence of linkage between the UAW's collective
9 bargaining agreement and the VEBA. And there shouldn't be any
10 doubt or any concern that a showing's been made on that front.
11 And it's very important to keep in mind that that showing is
12 being made by the UAW on behalf of the 475,000 individuals who
13 have either worked or depended on those who've worked for
14 General Motors, as well as the 61,000 active employees. There
15 are over half a million individuals who are dependent on this
16 transaction closing, and closing quickly. And I think we need
17 to look through the shorthand that is being used as timing. If
18 a little more time is given, everything will be fine, nothing
19 will change. But that's shorthand for if there's a little more
20 time, I can get a little more, maybe a lot more. And it would
21 fundamentally change all of the carefully constructed
22 arrangements that have been put in place and, indeed, would go
23 directly to the problem that both Treasury and General Motors
24 have pointed out, which is the damage that would be done to
25 this business in connection with a long-term contested Chapter

1 11 proceeding.

2 So for those reasons, Your Honor, the UAW strongly
3 urges that the Court approve the sale transaction.

4 THE COURT: Okay.

5 MR. BROMLEY: Thank you.

6 THE COURT: Thank you.

7 Mr. Miller?

8 MR. MILLER: Good afternoon, Your Honor. Harvey
9 Miller on behalf of the debtors. First, Your Honor, one
10 overarching comment. I was brought up in the school that
11 closing arguments should be confined by the record that was
12 made before the Court. As I sat here and listened to the
13 closing arguments, Your Honor, many of the closing arguments
14 made no reference to evidence which is in the record in these
15 cases. Rather, we heard opinions as to what could have
16 happened and not references to evidence that's in the record.
17 So I just make that as an overarching comment.

18 I want to note that none of the objectors has
19 suggested to the Court that it wants to see a liquidation of
20 the assets of GM. Rather, each of the objectors reiterates
21 that it should not be affected by the 363 transaction and,
22 therefore, it will receive more consideration than what
23 otherwise will be recoverable from the Old GM pursuant to the
24 plan of liquidation which will follow the consummation of the
25 363 transaction.

1 Every objector recognizes that a liquidation will
2 result in no recovery to general unsecured creditors. So what
3 has happened? By objecting to the 363 transaction, the
4 objectors are exercising what they perceive to be their
5 leverage. Certain of the objectors are asking the Court to
6 conditionally allow the 363 transaction by laying down terms
7 and conditions that the purchaser would have to comply with or
8 walk.

9 To paraphrase the words of Mr. Jakubowski, Your
10 Honor, they want you to enter the negotiations and bargain with
11 the purchaser. Indeed, Mr. Jakubowski suggested that the
12 debtors and the purchasers should have come to you as soon as
13 they knew you were assigned to the case to negotiate the terms
14 and conditions of the sale before finalizing the master
15 purchase agreement. I suggest that the role that Mr.
16 Jakubowski has tailored for you is inconsistent with your role
17 and your responsibilities as a judge.

18 The essence of what the objectors want, as pointed
19 out by my predecessors, is that you should gamble the
20 preservation of the value of the GM assets, the hundreds of
21 thousands of jobs involved, the welfare of the communities they
22 rely upon in an ongoing automotive industry as well as incur
23 the risk of the probability of systemic failure in the hope
24 that the undisputed testimony of the Treasury's representative
25 is a lie and that the Treasury will not exercise its rights to

1 cease financing the debtors.

2 This is an awesome gamble. It ignores the interests
3 of all other economic stakeholders, including the over 60,000
4 UAW active employees as well as the approximate 500,000
5 retirees and dependents represented by the UAW, as well as the
6 bondholders who have supported the 363 transaction, the
7 suppliers and their industry and the states and communities who
8 will be severely prejudiced if the gamble is lost.

9 Essentially, the objectors ask Your Honor to play Russian
10 Roulette.

11 Now, Mr. Richman referred to footnote 15 in Judge
12 Gonzalez's decision, and he read to you a portion of it, but he
13 did not read the last sentence. He read the sentence, "The
14 Court concludes that gambling on the possibility that the
15 government was bluffing and risking the potential for a lesser
16 recovery in a resulting liquidation would have been a breach of
17 the debtor's fiduciary duty." The next sentence is the key
18 sentence, Your Honor: "This was simply not a viable option."

19 So what Judge Gonzalez held and used as a material
20 point in his decision, he could not take that option of the
21 financing disappearing and risking and bluffed -- that the U.S.
22 Treasury was bluffing.

23 In effect, the objectors are saying if I can't get my
24 pound of flesh, then let GM go down in flames and everybody
25 lose and the devil take the hindmost. It is not a rational

1 avenue for the Court to go down in the face of the record in
2 these proceedings. Liquidation or the risk of liquidation is
3 too great a danger to imperil the many beneficiaries of the 363
4 transaction. A transaction, Your Honor, that squarely complies
5 with the applicable principles of law, no objector questions
6 the business rationale articulated by GM in support of the
7 sale. No evidence was presented to Your Honor, through
8 testimony or otherwise, that the business rationale to
9 reconstitute these assets and make them the foundation of a
10 viable automotive manufacturing company -- there is no contrary
11 evidence in the record. Rather, the complaint is that the pie
12 is not big enough to satisfy the particular needs of each
13 objector and, therefore, the 363 transaction cannot be
14 approved. That is not a legally sustainable objection.

15 Mr. Bressler, representing the tort victims, or some
16 tort victims who have actual claims has argued that this
17 clients are entitled to extra indulgence. He cites no legal
18 proposition or authority for that proposition -- I'm sorry, no
19 legal authority for that proposition. Of course everybody
20 empathizes with his clients, but as stated, bankruptcy is a
21 zero-sum game. And if GM is liquidated, his clients will
22 receive no recovery.

23 He described the purchase as an extraordinary
24 transaction because the government is not the usual purchaser.
25 But as Mr. Jones has pointed out, Your Honor, the United States

1 Treasury, in the perspective of this case, is a creditor; it is
2 a secured creditor. It can stand in the position of any
3 secured creditor that appears in the bankruptcy proceeding.

4 From that conclusion, he jumps to another and more
5 far-fetched contention that the purchase is a result of a
6 conspiracy among the Treasury, General Motors, and I guess the
7 UAW, to deprive his clients of their right to trace the assets
8 to New GM. He argues that New GM must assume the potential
9 liabilities due to his clients because there was no independent
10 purchaser of the GM assets. Yet, the record is devoid of any
11 evidence to establish the facts that would support a finding
12 and conclusion of the existence of a conspiracy directed at all
13 product liability claimants. It's just not in the record, Your
14 Honor.

15 So Mr. Bressler argues that there are no similar
16 situations where a pre-petition lender has been the purchaser
17 and the DIP financier and pre-petition creditor. I suggest that
18 Mr. Bressler is on weak ground. The concept of loan-to-own has
19 permeated bankruptcy practice throughout this decade. An
20 example is In re Radner Holdings Corporation, 353 B.R. 820, a
21 bankruptcy case in Delaware before Judge Walsh. In that case,
22 Tennenbaum Capital Partners was a substantial investor. It
23 continued to finance the debtor as its fortunes declined and
24 acquired more and more collateral security in substantially of
25 the debtor's property. When the debtor's revolving lenders

1 threatened to cut off funding, the company commenced a Chapter
2 11 case.

3 TCP, Tennenbaum, agreed to purchase the assets under
4 Section 363 and credit bid its 128.8 million dollar pre-
5 petition date claims. That was challenged, Your Honor, as not
6 an independent purchaser, was challenged in the context of
7 recharacterization and equitable subordination.

8 In another case, Your Honor, of that -- and I didn't
9 have a chance, Your Honor, to do a great deal of research, but
10 another case is In re Medical Software Solutions, 286 B.R. 431,
11 a bankruptcy case out of the district of Utah.

12 THE COURT: Before you go on to the second one, the
13 Software Solutions, you told me the contention rendered. Judge
14 Walsh rejected the contention and he said that the lender did
15 in fact have the ability to --

16 MR. MILLER: Yes, Your Honor.

17 THE COURT: -- take it over?

18 MR. MILLER: And he approved the 363 sale, and in a
19 long opinion, Your Honor.

20 THE COURT: With the same types of protection on 363?

21 MR. MILLER: Yes, Your Honor.

22 THE COURT: Um-hum.

23 MR. MILLER: In the Medical Software case, Judge
24 Thurman held that there was a sound business reason that
25 existed for the sale of the Chapter 11 debtors outside the

1 ordinary course of business and outside of the plan based
2 chiefly upon the lack of funds for continued operations and the
3 narrowing window for the sale of assets before they
4 significantly declined in value.

5 THE COURT: The Judge Thurman, is that Bill Thurman
6 out in Utah?

7 MR. MILLER: Yes, sir. A corporate insider that had
8 provided both pre- and post-petition financing for the
9 operation of the debtor's business had a valid security
10 interest in the assets being sold and could credit bid its
11 secured claim. An insider qualified as a good-faith purchaser,
12 and the Court approved the sale as being for a fair and
13 reasonable price and supported by sound business reasons.

14 There are -- I'm sure, Your Honor, with additional
15 time, we can find many more cases that follow in the concept of
16 loan-to-own.

17 So, turning to the concept that this was not an
18 independent transaction, the record demonstrates, Your Honor,
19 that there were strenuous arms'-length negotiations. There
20 were differences of opinion. There were requests made by GM;
21 they were either rejected by Treasury or they were negotiated.
22 And one example, Your Honor, is that GM tried to, in respect of
23 the seven-plus billion dollars of retiree benefits, it tried to
24 keep the cut down to sixty-two percent, but the Treasury came
25 back and said no, it's got to be sixty-six and two-thirds.

1 There was a negotiation over that, and that's just one little
2 item, Your Honor, of what was negotiated during the course of
3 this somewhat complex proceeding.

4 In terms of independence, Your Honor, a great deal of
5 moment is given to the fact that Mr. Henderson will be the CEO
6 of New GM. Other executives will be employees of New GM. And
7 because of that, this is a tainted transaction. But as Your
8 Honor knows, there are many cases in the bankruptcy court where
9 an acquirer of a business will take that business with its
10 employees. And when you think of this behemoth that is Old GM,
11 a purchaser would not be in its right frame of mind if it did
12 not take the employees who know the business, at least
13 initially, to allow the stabilization of the business while
14 other events may unfold. The testimony is clear, Your Honor,
15 Mr. Henderson doesn't have an employment contract, he has no
16 employment contract with the purchaser, and none of the other
17 executives have employment contracts.

18 And in terms of independence, Your Honor, what's
19 happened to the stockholders of Old GM? They're being wiped
20 out, Your Honor, because of the financial condition of the
21 estate. New GM will have new stockholders. In addition, New
22 GM, Your Honor, will have an independent board of directors.
23 Five independent directors from Old GM, people of great repute
24 and great business experience, are moving over to New GM.
25 Mr. Henderson is moving over to New GM. But there will be

1 seven other directors. And Mr. Edward Whittaker, the former
2 CEO of AT&T, has already been designated to be the chairman of
3 the board of directors.

4 That board of directors, Your Honor, will decide the
5 role in the future -- I mean the future role that Mr. Henderson
6 and other executives and other employees of Old GM will occupy
7 in the operation of New GM. There has been full disclosure,
8 Your Honor, in this record of what the relationships are
9 between the parties and which, I submit to Your Honor, clearly
10 established the independence of the parties.

11 Mr. Bressler also complains that the UAW VEBA is just
12 too good a deal to be approved. He ignores the fact that it is
13 the purchaser who made the deal with the VEBA in its interest
14 of getting employees to operate the business and enhance the
15 recoveries and the general unsecured creditors who will receive
16 equity securities as part of this transaction. One objective
17 of this transaction, Your Honor, is to enhance the value of the
18 equity securities. And that enhancement obviously requires the
19 employment of the UAW and the other employees. There would be
20 no business without that. And as Mr. Curson testified, Your
21 Honor, and notwithstanding Mr. Richman's statements, the record
22 is clear there is only one witness -- and he testified, and
23 he's a union officer -- that the ratification of a modified
24 collective bargaining agreement and the VEBA was one
25 ratification. And if the VEBA is not approved, all of the

1 modifications to the collective bargaining agreement are
2 rescinded and we're back to where we were before with work
3 conditions, wage rates, et cetera, which are not tenable in an
4 automotive industry that is in such severe crisis as this
5 automotive industry.

6 The argument, Your Honor, that another potential 900
7 million dollars of liabilities, irrespective of the asbestos
8 liabilities, assuming the asbestos liabilities, and another 300
9 million-plus dollars of liabilities in connection with retiree
10 benefits, is insignificant. And, therefore, the purchaser
11 should be required to assume those liabilities.

12 The objective of the purchase, as I said, Your Honor,
13 is to acquire the assets and assume only those liabilities that
14 will contribute to the success of the purchaser. You take 900
15 million, 300 million, another 600 million, and pretty soon
16 you're in the area where Senator Dirksen said you're talking
17 about real money.

18 The purchaser has drawn the line as to what it is
19 willing to pay for the assets in the context of its credit bid
20 and its assumption of liabilities and the voluntary contractual
21 obligations that it has made to the UAW VEBA.

22 Now, Your Honor, turning to Mr. Jakubowski,
23 Mr. Jakubowski made an impassioned argument. Essentially he
24 told the Court that it should forget about being in the Second
25 Circuit and it should ignore the Court's stated principle of

1 consistency in the decisions of the bankruptcy court in this
2 district. Mr. Jakubowski speaks of Judge Posner in the Seventh
3 Circuit as if he is immortal and infallible. I have great
4 respect for Judge Posner and for his colleague Judge
5 Easterbrook, but neither is infallible and particularly
6 conversant with bankruptcy in Chapter 11. I once debated Judge
7 Easterbrook at a University of Pennsylvania Business and Law
8 Forum. He argued that persons in businesses should be allowed
9 to contractually waive the benefit of the right to seek
10 bankruptcy protection. He posited the argument on the basis
11 that the contracting parties had equal bargaining leverage and
12 could freely negotiate that provision. I asked Judge
13 Easterbrook if he had ever studied a credit card agreement and
14 tried to change the terms of that printed agreement or borrowed
15 money from a financial institution while in financial distress.
16 He replied in the negative and then said he would have to
17 rethink his position.

18 As for Judge Posner, Mr. Jakubowski never named a
19 particular case that he was talking about yesterday and stating
20 that it was in conflict with TWA. Let us not forget, Your
21 Honor, that the Seventh Circuit is the circuit that is the
22 Chicago school of finance, and it is the circuit that is the
23 least receptive to business reorganizations. A circuit, Your
24 Honor, that is so unreceptive that it does not endorse the
25 critical vendor situation that is so important in most

1 reorganizations. But --

2 THE COURT: Or NOL protection.

3 MR. MILLER: Or NO -- exactly, Your Honor. But be
4 that as it may, Mr. Jakubowski argued that the jurisdiction of
5 this Court is extremely limited and unless you are able to find
6 specific words in the Code you are acting beyond your power.
7 He invites you to teach a lesson to the Second Circuit and tell
8 the judges of that court that they don't really understand
9 statutory construction. Yet, his idol Judge Posner, in a case
10 called FutureSources LLC v. Reuters Limited at 312 F.2d 281,
11 283, a 2002 case, Judge Posner criticized a district court for
12 relying on an unreported opinion from another circuit and for
13 one of the parties to rely upon it in his argument. Judge
14 Posner said that while, and I'm quoting, "The reasoning of a
15 district judge is of course is entitled to respect, the
16 decision of a district judge cannot be controlling precedent.
17 The law's coherence could not be maintained if district courts
18 were deemed to make law for their circuit, let alone for the
19 nation, since district courts do not have circuitwide or
20 nationwide jurisdiction." Notwithstanding those piercing words
21 of Judge Posner, Mr. Jakubowski wants you to take on the Second
22 Circuit judges and, in effect, suggests to them that they
23 really ought to act a lot more like Judge Posner. I don't
24 believe that Your Honor has a death wish.

25 Last week in the argument on the effect of the

1 Sprague Sixth Circuit decision, Your Honor unequivocally stated
2 that Sprague was never binding on you -- was not binding on you
3 and that your obligation is to follow the directions of the
4 Second Circuit and to maintain consistency of bankruptcy court
5 decisions in this district in the absence of clear error. And
6 as Your Honor stated yesterday, you don't view Judge Gonzalez's
7 decision as clear error. And right now, Your Honor, the law of
8 this circuit is the decision of the Second Circuit affirming
9 the Chrysler decision on the basis of the reasoning that Judge
10 Gonzalez used in his opinion. That's the law in this circuit
11 which I believe Your Honor is required to follow.

12 Mr. Jakubowski alluded to stare -- I'm sorry, Your
13 Honor, alluded to stare decisis and the peril of the Court to
14 fill in gaps in the statute. Mr. Jakubowski argued that 363(f)
15 subject to the plain meaning rule and must be construed
16 narrowly based upon a whole host of Supreme Court decisions
17 that he cited generally involving Chapter 7 or Chapter 13
18 cases. Bankruptcy courts deal with business reorganizations as
19 situations which require flexibility and the exercise of
20 reasonable judgment by a bankruptcy court. Courts need to fit
21 the requirements of the case in achieving the objectives and
22 policies of the Code. A perfect example of the kind of role
23 that must be played by bankruptcy courts is demonstrated with
24 the situation that arose as a result of the Supreme Court's
25 decision in Hartford Accident and Underwriters v. Union

1 Planter's Bank at 530 U.S. 1, a 2000 case. As Your Honor
2 undoubtedly knows, the case involved the construction of
3 Section 506(c) of the Bankruptcy Code and whether the Hartford
4 Accident and Underwriters could present a case for
5 administrative expenses under 506(c) when the language of the
6 statute read that only a trustee could do that.

7 And the Supreme Court, in applying what essentially,
8 I think, was Judge Scalia, the plain meaning rule, said the
9 statute says the trustee can only do that, therefore Hartford
10 could not step into the shoes of the trustee, could not qualify
11 under 506(c), and that's what the statute says and that's what
12 courts have to pay attention to. So -- and they cite the Ron
13 Pair case and some of the cases that were cited by
14 Mr. Jakubowski.

15 So what followed after Hartford? In 2003, a case
16 came to the Third Circuit, Cybergenics case at 130 F.3d 545, a
17 2003 case. This was an en banc --

18 THE COURT: You're talking about Cybergenics before
19 or after the first en banc?

20 MR. MILLER: I'm talking about the en banc decision,
21 Your Honor. The issue in Cybergenics involved Section 544(b)
22 of the Bankruptcy Code and that's the section, part of the
23 avoidance powers where a trustee may prosecute actions based
24 upon nonbankruptcy law to recover preferences, fraudulent
25 transfers, et cetera.

1 The language of the statute is almost precisely the
2 same as Section 506(c) of the Bankruptcy Code. And when the
3 case was heard before the Third Circuit on appeal from the
4 bankruptcy court and the district court, a three-judge court in
5 the Third Circuit reversed the lower courts on the basis of the
6 Hartford Accident case, a pure case of statutory construction
7 as far as the three-judge court was concerned. That decision
8 was withdrawn as a result of the granting of a motion that the
9 case be heard en banc.

10 When it was heard en banc, the issue of the
11 creditors' committee prosecuting avoidance actions under
12 Section 544(b) was upheld by a majority of the en banc court.
13 The Third Circuit decision, the en banc decision, reflects a
14 court recognizing the needs of the case and the necessity of
15 making the statute work. And, if I might find -- let me just
16 get that decision.

17 THE COURT: You're talking the second Cybergenics
18 decision, the en banc one that --

19 MR. MILLER: Yes, I am. As Your Honor does with
20 great frequency, first you look at the statute. And they
21 looked at the statute. And -- can you hear me? How's that.

22 First the Court noted that statutory construction is
23 a holistic endeavor, citing the Timbers case. And then, Your
24 Honor, in reviewing what had occurred, the Third Circuit noted
25 that the fact that the language does not authorize derivative

1 action in the first instance, should be recognized. But that
2 there was a missing link. And where there was a missing link
3 the Court said we believe that the missing link is supplied by
4 bankruptcy court's equitable powers "to craft flexible remedies
5 in situations where the Code's causes of action failed to
6 receive their intended purpose."

7 The Third Circuit went on to say, Your Honor, "that
8 the Supreme Court has long recognized that bankruptcy courts
9 are equitable tribunals that apply equitable principals in the
10 administration of bankruptcy proceedings." And it noted, Your
11 Honor, that the Court in the 105(a) has the power to issue any
12 orders, process or judgment that is necessary or appropriate to
13 carry out the provisions of this title. No provisions of this
14 title providing for the raising of an issue by a party-in-
15 interest shall be construed to preclude the Court from sua
16 sponte taking any action or making any determination necessary
17 or appropriate to enforce or implement court orders or rules,
18 or to prevent an abuse of process.

19 So what that -- those decisions say, Your Honor, is
20 where there is a statutory provision that doesn't comport with
21 a holistic interpretation of the Bankruptcy Code, and the
22 objectors and policies of the Bankruptcy Code, the bankruptcy
23 courts have the equitable power to construe that statute to
24 accomplish those objectives and purposes of the Bankruptcy
25 Code.

1 And in connection with Section 363(f), Your Honor,
2 Mr. Jakubowski says you can't give it effect. It cannot -- it
3 just doesn't cover claims. Claims are not included in the
4 statutory language and, therefore, this Court is without power
5 to issue an order that provides free and clear of all liens,
6 claims and encumbrances.

7 Now, if you think about Mr. Jakubowski's argument,
8 Your Honor, what he is basically saying that every single
9 unsecured claim carries over, that 363(f) is totally
10 inapplicable, that it doesn't work. That, Your Honor, is not a
11 principal statutory construction. Courts are under the duty, I
12 believe, Your Honor, to give effect to the words of a statute,
13 and to harmonize a statute so that it is effective. And for
14 many, many years, Your Honor, courts have issued 363(f)
15 protections in connection with the 363(b) transaction. And the
16 law in this Circuit, based upon Judge Gonzalez' order, is that
17 this Court -- the bankruptcy court has the authority to issue a
18 free and clear order as requested by the debtors in this
19 action, which is almost identical to the order that was entered
20 in the Chrysler case.

21 The scope of the power of the bankruptcy court under
22 Section 363 Your Honor once referred to in the Magnesium
23 Corporation of America case. And you said in that case on June
24 13, 2002 "I believe Judge Walsh got it exactly right in TWA. I
25 am not going to burden this already very lengthy decision by

1 telling you all of the reasons I believe Judge Walsh is right.
2 But I have rarely seen on my time on the bench a decision that
3 was as closely relevant and directly on point" -- and this was
4 in connection with a 363(b) sale, "and as well thought out as
5 his decision. At the risk of appearing less than thorough I am
6 going to adopt his analysis by reference."

7 THE COURT: That is the same TWA but before it was
8 affirmed all the way up to the Third Circuit?

9 MR. MILLER: That's correct, Your Honor. Your Honor
10 also referred to the Leckie Smokeless Coal Company case at 99
11 F.3d 573. Your Honor said that Leckie -- that you interpreted
12 the Fourth Circuit as saying "That Congress did not expressly
13 indicate that the language of 363(f) was intended to limit the
14 scope of its application to in rem interest."

15 If Mr. Jakubowski's argument was taken and adopted by
16 Your Honor it would mean, Your Honor, that 363(b) is out of the
17 statute, and there can never be any sales of assets if they're
18 always going to be subject to the claims, the unsecured claims,
19 of the debtor. Even outside of selling substantially all of
20 the assets every single sale under Section 363(b) would be
21 impaired by the fact that the purchaser is assuming or is going
22 to be responsible for claims that may drift or migrate with the
23 assets that are being sold. That, Your Honor, cannot be the
24 law. Common sense says that you cannot effect that kind of a
25 ruling in the face of what has transpired in bankruptcy courts

1 through thirty years since the adoption of the 1978 code. And,
2 again, Your Honor, as I said before, the law in this circuit is
3 clearly Chrysler.

4 Now, Mr. Jakubowski also, like a true plaintiff's
5 lawyer, immediately jumped up and said if the government
6 doesn't go through with this acquisition or finance this
7 acquisition it will be a clear breach of contract. And he
8 turns to the creditors' committee and says I hope you're
9 drafting a complaint against the government.

10 Counsel referred to a case right on point and in
11 Willis on Contracts under the title Express Conditions "assume
12 liabilities and express conditions in a contract, where there
13 are express conditions in a contract, where there are milestone
14 that have to be accomplished, such as there are in this
15 financing, if there is no order of approval on September 10 and
16 there is no wavier on the part of the U.S. Treasury, the U.S.
17 Treasury has the absolute right to terminate. And that does
18 not give rise to a breach of contract. And it is not subject
19 to a commercially unreasonable actions."

20 In connection, Your Honor, to the arguments that Mr.
21 Jakubowski made that the treasury is not -- if it wants to act
22 like a commercial bank it should be treated like a commercial
23 bank. I would submit to Your Honor that the commercial bank
24 analogy is inappropriate. We are not just talking about a
25 JPMorgan or a Citibank, we are involved with a federal

1 department that is attempting to salvage an industry and all it
2 represents, as well as protect the taxpayers' money. The
3 Treasury hired an extremely abled cadre of experienced persons
4 to discharge this function. They have made -- the Treasury has
5 made a decision that a prompt approval of the 363 transaction
6 is a condition precedent. If there is no sale order there's no
7 more financing. And, Your Honor, there is no evidence to the
8 contrary in respect of that.

9 Mr. Richman raises for the first time the credibility
10 of Mr. Wilson. Mr. Wilson testified yesterday candidly and at
11 length. And there is nothing in his testimony which would
12 establish that he was lying, falsifying any respect whatsoever.
13 And counsel for the treasury has reiterated the position that
14 Mr. Wilson testified, and there's nothing else in the record,
15 Your Honor.

16 The Court must accept that undisputed evidence and
17 take it into account the consequences of non-approval. So in
18 connection with Mr. Jakubowski's argument, both the statutory
19 construction, I would submit to Your Honor that this Court has
20 ample power under its equitable powers to construe a statute so
21 that it may implement and further the interests of bankruptcy
22 reorganization and bankruptcy law under the bankruptcy code.

23 And in the context of stare decisis, again, Your
24 Honor, the Chrysler case is the decisional authority in this
25 circuit. And, certainly, the TWA case is very persuasive, both

1 on bankruptcy court level and on the Court of Appeals level.

2 So then, Your Honor, I turn to Mr. Esserman. And in

3 connection with that I will also deal with all the asbestos

4 claimants. The argument is made, Your Honor, that somehow

5 OldCo should comply with 524(g). 524(g), by it's very

6 language, refers to the confirmation of a plan of

7 reorganization that would discharge asbestos claimants. There

8 is not going to be any discharge here, Your Honor. OldCo is in

9 liquidation, there will be no discharge of liabilities.

10 524(g), by its very terms, could not be complied with because

11 fifty percent of the equity of the so-called surviving

12 corporation is not available. So 524(g) is not a player in

13 this scenario, Your Honor. And Judge Gonzalez, again, Your

14 Honor, specifically held that 524(g) did not apply to the

15 Chrysler 363 transaction. There is no discharge and there is

16 no channeling order requested. What we have said to Your Honor

17 in the course of these proceedings, this will be an issue that

18 Old GM, OldCo, will have to deal with. That the creditors'

19 committee will have to deal with in structuring a plan of

20 liquidation for OldCo. How existing asbestos claimants are

21 going to be treated to the extent they have allowed claims, and

22 potential future claimants may be treated is an appropriate

23 subject for OldCo. And it would not be different from some

24 other cases where, in the situation of a liquidation, a

25 specific fund is created to deal with future claimants. But

1 that's an issue to be determined, Your Honor, after the sale is
2 consummated.

3 THE COURT: Mr. Miller, there's no channeling order,
4 but there is an injunction requested. And the two lawyers who
5 were raising asbestos issues pointed out that if you did give
6 personal notice and applied it to every state in the United
7 States you wouldn't be able to do much with it because they
8 wouldn't know that they've contracted asbestos.

9 Now, I have an interesting twist here. Both of those
10 folks represent existing asbestos claimants who analytically in
11 the Jakubowski situation. But I also believe that this issue
12 was raised that hasn't been discussed in the Second Circuit
13 argument in the (indiscernible) appeal. To what extent would
14 it be proper or improper in Your view if words were added to
15 any approval order that said to the fullest extent
16 constitutional principal?

17 MR. MILLER: Just speaking for myself, Your Honor,
18 without consultation for client, I don't have problem with that
19 language. But I would, again, note, Your Honor, that Judge
20 Gonzalez dealt with the issue of notice and I do not recall the
21 colloquy between Judge Sack and Mr. Esserman, and I'm not sure
22 that colloquy related to injunctions or the ability to sue.
23 All I'm saying, Your Honor, there is going to be an estate.
24 And estate which we believe will have significant value.

25 Part of the claimants who will have rights against

1 the property of that estate will be asbestos claimants, current
2 and future. And that estate, as part of its plan of
3 liquidation can provide a mechanic to deal with future
4 claimants. That's not unheard of, Your Honor, the creation of
5 a fund or putting aside assets, so when the disease manifests
6 itself and there is an actual claim there will be a source of
7 recovery. That can be done within that context. And there is
8 no discharge in connection with that, Your Honor.

9 And besides, Your Honor, I think it was Mr. Koch
10 testified it will be three or five years, the asbestos
11 situation has been going on now, Your Honor, for I think pretty
12 close to thirty-five years. GM has not been using brake
13 linings with asbestos for a long time. If and when these
14 claims manifest and whether they're allowable or not, Your
15 Honor, is another issue that has to be dealt with. But as far
16 as 363(f) is concerned, as Judge Gonzalez held, and the
17 specific provision in the order is I would construe it as a
18 very broad provision. And you have to assume, Your Honor, that
19 in the appeal in Chrysler it was considered as Your Honor may
20 have noted in the colloquy, there was a discussion of it.

21 THE COURT: Oh, there was definitely a discussion of
22 it.

23 MR. MILLER: And also, Your Honor, I think we have to
24 refer to the per curiam decision of the Supreme Court in
25 connection with the application for a stay. While the Supreme

1 Court said that it wasn't ruling on the merits, it did say that
2 the applicant, the Indiana Pension Funds, had failed to
3 demonstrate: 1) a reasonable probability that four justices
4 would consider an issue sufficiently meritorious to grant
5 certiorari, or to no probable jurisdiction. Now, in reaching
6 that conclusion they had to evaluate what was decided by Judge
7 Gonzalez. 2) a fair prospect that a majority of the Court will
8 conclude that the decision below was erroneous; and 3) a
9 likelihood that an irreparable harm would result from the
10 denial of the stay. So while it's not a ruling on the merits,
11 Your Honor, it does say something about the Supreme Court's
12 view of Judge Gonzalez's decision.

13 So coming back, Your Honor, into the context of stare
14 decisis, again, this is the law in the Second Circuit, and this
15 is the law that should be followed in connection with this
16 transaction that is so important to so many people.

17 Now, Your Honor, turning to Mr. Kennedy who made,
18 likewise, a very impassioned and emotional argument, and
19 likewise, I and everybody here, Your Honor, empathizes with his
20 clients and wished that there was a way to assuage his emotion
21 as well as his client's. But alas, I can't do it, Your Honor.
22 He took issue, Your Honor, with a statement I made in
23 connection with my initial closing argument referring to his
24 papers as construing that there was a conspiracy, a conspiracy
25 among GM and the Treasury to deprive the splinter union

1 retirees of their benefits.

2 There is nothing in this record, Your Honor, that
3 would support a determination of a conspiracy and all of the
4 elements that would constitute a conspiracy. Indeed, the
5 record goes the other way, Your Honor. Mr. Henderson testified
6 that up until the very end of May, there was the hope of GM
7 that the bond exchange offer would be successful. And if the
8 bond exchange offer would have been successful, there would
9 have been no impact on the retirees.

10 And further, Your Honor, in Mr. Rory's deposition,
11 which has been designated to Your Honor, at page 44 -- I'm
12 sorry, page 43, Your Honor, he refers to an exhibit which is
13 really Exhibit 9, which is in the record. And he was directed
14 his attention to the first page of that exhibit. And there's a
15 line in this exhibit, and the title of this exhibit, Your
16 Honor, is History of OPEB Defeasement - IUE. And in the middle
17 of the third bullet point, it says, "2006, IUE resisted
18 mitigation VEBA concept - reluctant to bargain retiree VEBA for
19 large population from legacy operations (e.g. Frigidaire) not
20 represented by active members - relatively small active
21 population to generate wage and COLA deferrals."

22 So what does that demonstrate, Your Honor? That in
23 2006, GM was in actual negotiations with the IUE about creating
24 a VEBA, a VEBA that would have provided the health and medical
25 benefits, and yet the union resisted that. That VEBA could

1 have been set up in 2006, Your Honor, and it would have been
2 active.

3 In addition, Your Honor, Mr. Kennedy is an excellent
4 lawyer, and he knew how to play the strings on numbers. He
5 talked about the 26,000 retirees of the splinter unions who
6 will be deprived of retiree benefits. And actually, as he
7 spoke, Your Honor, he went on to say that approximately 20,000
8 of those retirees are already post-sixty-five, so they're on
9 Medicare. And under the proposed retiree benefits that had
10 been offered, all benefits cease from the VEBA or General
11 Motors at the point that you go on Medicare. So basically,
12 Your Honor, we're talking about 6,000 retirees, who right now,
13 are getting their retiree benefits.

14 Unfortunately, as OldCo goes into liquidation,
15 there's no way that you can sustain paying 26 million dollars a
16 month for retiree and medical benefits. The exhibit -- I
17 forget the number, Your Honor -- of the statement made by Mr.
18 Henderson, clearly demonstrates that there was an effort to try
19 and find a way, a means, to assist the splinter union retirees
20 and the maintenance of benefits for those retirees. There's
21 nothing else in the record, Your Honor, except that what
22 happened at the end of May when a decision was made that there
23 had to be a transaction, there had to be something to
24 regenerate and maintain the going concern value of these
25 assets, and that the 363 transaction was the best way to do

1 that, that this sale was finalized.

2 That doesn't give rise, Your Honor, to a conspiracy
3 to deprive these retirees of their benefits. As Mr. Wilson
4 testified, Your Honor, the guiding principle of the Treasury
5 was to acquire the assets and assume the liabilities which were
6 necessary and incidental to the creation of a commercial
7 success; a commercial success, Your Honor, which would inure to
8 the benefit of OldCo and the creditors of OldCo.

9 This morning Your Honor heard of a potential
10 compromise with the State of Michigan on Workman's
11 Compensation, where NewCo or New GM has agreed to pick up the
12 Workman's Compensation obligations. Now, why was that done?
13 That was done because if GM -- New GM did not do that, the
14 State of Michigan was not going to allow New GM to be a self
15 insurer, which would have cost New GM an enormous amount of
16 money; and which would come out of its cash flow. By assuming
17 that liability, it is now going to be allowed to be a self
18 insurer.

19 Essentially, Mr. Kennedy, in his impassioned plea, is
20 arguing something which is novel. He is basically saying, Your
21 Honor, that Sections 1113 and 1114 are effectively in the same
22 status as liens on the land. They run with the assets. That
23 you cannot transfer assets of a unionized business without
24 dealing with obligations under 1113 and 1114. There is no
25 legal authority that supports that proposition, Your Honor.

1 There is no requirement that before you transfer assets, you
2 must reject the collective bargaining agreement, if that's the
3 condition. There is no requirement in connection with a 363
4 sale that you must comply with 1114. OldCo --

5 THE COURT: Can I assume that there will be
6 compliance by OldCo with 1114?

7 MR. MILLER: Until such time as Your Honor may rule
8 on an 1114 motion. Yes, sir. Right now, today, all of the IUE
9 retirees are still receiving the full benefits under that
10 program. That's what's costing -- and I'm including all the
11 splinter unions, Your Honor -- that's what's costing
12 approximately twenty-five- to twenty-six million dollars a
13 month.

14 Now, as OldCo goes into its liquidation phase,
15 obviously that is not a sustainable benefit in a liquidation
16 scenario, nor is it a sustainable benefit in the context of New
17 GM, Your Honor. Are we going to inflict upon New GM some of
18 the problems that contributed mightily to the demise of Old GM.
19 The concept of having job banks of thousands of employees who
20 sit around and don't do anything except paychecks with no
21 benefit to the ongoing operations, work rules, et cetera, and
22 conditions under collective bargaining agreements. What has
23 happened here, Your Honor, is the Treasury, a government
24 sponsored purchaser, who has had to make an agreement with the
25 UAW because otherwise there would be no employees. And it's

1 unfortunate that the IUE has basically no active employees.
2 Not necessary to the operation of the plants that are being
3 acquired by the purchaser. And there has to be a line of
4 commercial reasonableness in terms of what New GM is going to
5 assume in connection with a sale.

6 Mr. Kennedy also criticized me because I used the
7 word jealousy in respect of the discussions or descriptions
8 that have been made in connection of the UAW recoveries through
9 the purchaser. I withdraw the word jealousy. Nonetheless,
10 through half this case I have heard repeated over, and over
11 again, that the UAW is getting too much and that it's just
12 unfair. Well, it's the economic circumstances, Your Honor,
13 that resulted in the UAW situation. The proposal by Mr.
14 Jakubowski that Your Honor an order of conditional approval
15 just doesn't work, it's not acceptable to the purchaser. It
16 doesn't benefit the New GM and it doesn't benefit the Old GM.
17 Because the conditional approval will have a terrible negative
18 effect on consumers. Everything that this company has been
19 fighting for the last thirty days to make it clear to the
20 consumer that it's not going to be entangled in a bankruptcy
21 case, that these assets which will form a foundation of a new
22 OEM will be there free of the entanglements of bankruptcy will
23 dissipate.

24 And Mr. Richman, again, raised the issue in his
25 closing argument well, GM is really doing well in Chapter 11,

1 look at the month of June. It was only thirty-three percent
2 below June of 2008. And as Mr. Henderson testified lead sales
3 were down by an even greater margin. And if Your Honor
4 happened to read this morning's New York Times it shows the
5 relative figures between Chrysler, Ford and GM. And what you
6 have to surmise out of that or infer out of those discussions,
7 Your Honor, that Ford's market share is rising. And where is
8 that market share coming from. As we sit here today -- stand
9 here today, GM's market share is our owee. And the longer it's
10 in this process the more that will happen.

11 And Mr. Henderson testified that GM will not make
12 money in 2009, which means that somebody has to finance these
13 operations going forward. And not one objector has brought
14 forth a financier. Not one objector has brought forth an
15 alterative -- a viable alternative other than, Your Honor, you
16 should deny this application, we'll play poker or Russian
17 roulette with the government. And if the government walks,
18 well, we'll just have a Chapter 11 case and see what happens.

19 Well, what does that mean, Your Honor? Without
20 financing it would be the obligation of Old GM to close every
21 factory, to terminate every employee except those that are
22 needed to preserve and protect the properties. The results
23 will be catastrophic, Your Honor, and irreversible. So we're
24 be brought back again, Your Honor, to the bluff game.

25 But there's nothing in the record that says that the

1 Treasury is bluffing. And I take the representation of counsel
2 for the United States that that representation is made on
3 information furnished to him by his client, the U.S. Treasury.
4 But again we hear the argument, Your Honor, that this was all
5 a -- this is not a true sale, and part of that also relates
6 back to this infamous document, Bondholders' Exhibit 2 from the
7 Cadwalader firm, about the use of Section 363. I would venture
8 to say, Your Honor, if anybody goes to a CLE program on
9 bankruptcy, they will get this slide show without the names. I
10 don't want to demean Cadwalader, Your Honor, but I think that
11 this is in general circulation.

12 Now, looking at that exhibit, Your Honor, and looking
13 at the record as to what GM did, if the board of directors of
14 GM did not consider the various alternatives, that board of
15 directors might have been remiss in its duties. It had an
16 obligation to consider all alternatives and to rely upon the
17 advice of its professionals and advisors. That's what the
18 board of directors did, and that's what the exhibits establish.
19 Clearly, there were presentations to the board as to what
20 bankruptcy provides for, what happens in a bankruptcy.
21 Otherwise, the board of directors could not be discharging its
22 fiduciary obligations.

23 I just want to see where I am in this, Your Honor.

24 Now, if I might, Your Honor, I would turn to Mr.
25 Richman's comments. Last evening, Your Honor, Mr. Richman

1 asked for more time to prepare his closing arguments so that he
2 could address the evidence in the record. I listened carefully
3 to Mr. Richman's argument. There were no references to the
4 record other than his claim that Mr. Wilson is not credible.
5 During the course of these proceedings, he put on no evidence,
6 no witnesses, no declaration of fact, no expert witness. In
7 fact, he didn't do very much other than work off what was in
8 the record.

9 All of the others' evidence shows good-faith
10 bargaining, good-faith business judgment. And he concedes that
11 it's in the best interest of all parties that the GM assets be
12 sold. His cross-examination of Mr. Wilson certainly did not
13 shake Mr. Wilson's credibility. What he's doing, Your Honor,
14 he's asking you to take his opinion and speculate on the future
15 and not refer to the evidence that has been sworn to in these
16 cases -- in these proceedings. And basically he says, Your
17 Honor, oh, Chapter 11 is an easy process, given a few days
18 parties can agree on various things and in ninety days we can
19 be out of Chapter 11. I would just say, Your Honor, just
20 taking these three days of hearings as an example of what
21 happens in a Chapter 11, the concept that you could file a
22 Chapter 11 plan, and he doesn't even describe the Chapter 11
23 plan that you would file on the first day, but any Chapter 11
24 plan that you file that had open ends to it would involve the
25 appointment of creditors' committees, disclosure statements,

1 arguments over valuation. The concept that a case of the size
2 and complexity of GM would move through some accelerated basis
3 so that you can have a confirmation in ninety days, I think,
4 Your Honor, is not credible. It just doesn't happen.

5 I refer to the Delphi case. The Delphi case was
6 supposed to move on a fast track. That track seems to have
7 disappeared. And in July -- later this month, I should say,
8 Your Honor, Delphi will either have a resolicited plan of
9 reorganization or will have a 363 sale with substantially less
10 recoveries for the creditors and basically no recoveries for
11 the unsecured creditors.

12 The problem with long term bankruptcies -- and I
13 don't mean long term to be years, Your Honor -- is that things
14 happen in bankruptcy cases. People come into the court with
15 all kinds of motions, applications, and various moves to get
16 leverage. We spent three days on this proceeding. Think of
17 the days that would be spent in valuation discussions; the
18 possibility of the appointment of an examiner; fights between
19 ad hoc committees and independent committees. And all during
20 this process, Mr. Richman never refers to who's going to
21 finance it. Where's the money going to come from while
22 everybody's having fun in the courtroom.

23 Mr. Jones says don't look at the Treasury. We've got
24 to protect the taxpayer's money and we're not going to put good
25 dollars after bad dollars. And while this is happening, Your

1 Honor, the consumer is scratching his or her head and saying is
2 there going to be a GM that's going to produce good vehicles,
3 reliable vehicles that I know I can service? What are the
4 dealers going to say, Your Honor, when this process goes on
5 with no plan other than "We're going to stiff the Treasury and
6 we're going to make the Treasury put in more money." That is
7 an awful gamble to play in this case when you're dealing
8 with -- and I sympathize with Mr. Kennedy and his 26,000
9 retirees, but we're talking about the UAWs with almost 600,000
10 retirees and active employees, 235,000 GM employees worldwide.

11 Yesterday, I think, Your Honor, Lear, a supplier to
12 GM, commenced bankruptcy, Chapter 11 cases. In the past month
13 I think there have been three or four suppliers. If this case
14 doesn't come out the way it has been programmed, with a 363
15 transaction, there will be chaos in the supplier industry.
16 Systemic danger is all over the horizon, Your Honor.

17 So what do we get down to, Your Honor? We get down
18 to a situation in which there is no palatable alternative. No
19 financier has shown up, and I think it is very significant,
20 Your Honor, that notwithstanding all the notoriety about GM
21 pre-Chapter 11 and post-Chapter 11, nobody -- no hedge fund, no
22 private equity fund, no foreign investor has come along and
23 said gee, I really would like to take a look at GM and maybe I
24 would like to buy it or parts of it. Not one party has been
25 interested. Not one party has been willing to sign a

1 confidentiality agreement to get into the data room and look at
2 it for the purposes of considering a bid. There hasn't been
3 one expression of interest.

4 So we have a situation, Your Honor, where the only
5 offer at all for these assets is the government-sponsored
6 purchaser, the only entity that will be able to get financing
7 and make these assets into a valuable original equipment
8 manufacture. The only other option is to commence the
9 liquidation process because this company cannot survive without
10 financing, and there is no financing. And when that becomes
11 public knowledge, that's the end of its ability to really sell
12 cars. Then you are in the liquidation and no consumer, unless
13 he gets a terrific discount and takes his chances or her
14 chances, will buy a GM vehicle.

15 There has to be a cutoff and a creation of certainty
16 as to the future of these GM assets. And the fact, Your Honor,
17 as I alluded to before, that GM management is moving over,
18 doesn't make it a nonsale. It's a sale. There's a real
19 purchase price that's being paid here. There is an independent
20 company that is buying these assets and will be an independent
21 company going forward, and hopefully in a very short period of
22 time, a publicly owned company for the benefit not only of
23 shareholders of this company but the whole automotive industry.

24 Mr. Richman said that the White House will not allow
25 GM to fail. I haven't heard anything come out of the White

1 House recently about these cases, but I recall President
2 Obama's speech that either Chrysler finds itself a purchaser by
3 May 1 or April 30 or there will be no further financing. And
4 if GM doesn't come up with a viable plan by June 1st, that's
5 the end. And I believe the President meant it. And clearly,
6 the Chrysler people believe that he meant it, even though it
7 must have given Fiat some bargaining leverage. There is
8 nothing on the record -- I keep repeating this Your Honor --
9 that there will ever be additional financing.

10 I believe all of the objectors agree that if Your
11 Honor found that this is a legitimate sale, then the
12 transaction should be approved. Delaying the transaction so
13 that various parties can try to exercise leverage by being ad
14 hoc committees in a Chapter 11 or attempting to be additional
15 committees only means further delay in the conservation of a
16 plan, a delay that cannot be borne by this company.

17 Mr. Richman's closing argument, Your Honor, as I
18 said, had nothing to do with the record that was made before
19 Your Honor in the past two days. It was his ipse dixit as to
20 what he thinks could happen in a Chapter 11 case. With no
21 expert testifying, there's no other person offering any support
22 for that position. He offers nothing in the way of a
23 purchaser. He offers nothing in the way of a financier.

24 I believe, Your Honor, Mr. Richman's closing argument
25 was just his opinion and his advice to you that you should take

1 up the purported bluff of the U.S. Treasury and that's an
2 awesome responsibility that he wants to impose on your
3 shoulders.

4 With respect to, Your Honor, to Mr. Parker, we have
5 submitted, Your Honor, and I'm not going to speak further on
6 it, the statements and the arguments made by Mr. Parker with
7 respect to the equal and ratable clauses in the indentures, are
8 just not accurate. Mr. Parker has not established and he's not
9 produced any certifications or a record of any lien filings
10 with respect to the excluded assets, and the agreements are
11 quite clear that if there were no liens granted to the federal
12 government, the U.S. Treasury in connection with the security
13 agreement of 12/31/08 that was subject to those indentures.

14 THE COURT: Let me go back to the Secured Financing
15 101. UCC-1 perfects the security interests but the security
16 interest has to -- it's separately granted, am I correct?

17 MR. MILLER: That's correct, Your Honor.

18 THE COURT: And romanette v says that (indiscernible)
19 will be granting the security interest?

20 MR. MILLER: I'm sorry, sir?

21 THE COURT: And romanette v says, in its excluded
22 assets -- or excluded liens provision, that there isn't a grant
23 of security?

24 MR. MILLER: That's correct, Your Honor.

25 THE COURT: Okay.

1 MR. MILLER: And Mr. Henderson testified at length,
2 Your Honor, that there were no liens granted in violation of
3 the indentures.

4 Bad faith. Mr. Parker says that the purchaser has
5 not acted in good faith. Yet the record is to the contrary.
6 The record establishes the extent and nature of the
7 negotiations, how they were conducted, and that they were
8 consistent with the standards of good faith under the cases.

9 The TARP argument. Again, Your Honor, that argument
10 was raised in Chrysler, and Judge Gonzalez ruled on that. It
11 involved the DDSA and TARP, and that argument was not
12 successful and was continually raised by the Indiana pension
13 plans that you can't use TARP money for these purposes. And in
14 this circuit, Your Honor, at least, that is not an argument
15 that can stand.

16 Mr. Parker also complains about the scheme of
17 distribution. And again, the basis of his argument on the
18 scheme of distribution is the UAW is just getting too much,
19 while the record is replete with the rationalization and
20 reasons why the UAW ended up in that position. There are
21 sometimes, Your Honor, when union membership is a good thing.
22 Sometimes not. But these active employees are critical to this
23 transaction. If we did not have these employees, there would
24 not be a 363 transaction. And more importantly, Your Honor,
25 the consideration that is being given to the UAW VEBA is coming

1 from the purchaser and not from OldCo.

2 And if this deal is not approved and this transaction
3 doesn't go forward, and Mr. Curson's testimony demonstrates,
4 the UAW claims, the VEBA claims will be reasserted in the OldCo
5 case so that you will be adding on an additional twenty plus
6 billion dollars of liabilities which will substantially dilute
7 the position of the bondholders and other creditors.

8 I am not going to deal with Mr. Bernstein's argument,
9 Your Honor, as to the consent decree and the effect of that.
10 That's an issue that can be determined in the future. My
11 colleague, Mr. Karotkin, said I should refer to the case of In
12 re Rochnunis (ph.) and say pay the 62,000 dollars. I'm not
13 going to do that.

14 As I understand it, Your Honor, the indenture
15 trustees are no longer objecting. Mr. Reinsel, I think his
16 name is, made the same arguments as Mr. Esserman in respect of
17 asbestos claimants, and I think I've dealt with that.

18 So Your Honor, we get down to the basic issue. And
19 in connection with --

20 THE COURT: Before you wrap up, do you want to
21 comment in any way on Ms. Taylor's point that I should have
22 language in the approved order that says, in substance -- I
23 don't know if she's saying just that nothing in this order
24 affects the government's ability to use its police power or if
25 she's looking for more than that. And I don't know if what she

1 says has controversial implications that I'm not sensitive
2 enough to.

3 MR. MILLER: I would just note, Your Honor, that the
4 proposed sale order in paragraph 55 states, "Nothing contained
5 in this order shall in any way: 1) diminish the obligation of
6 the purchasers to comply with environmental laws or 2) diminish
7 the obligations of the debtors to comply with environmental
8 laws consistent with their rights and obligations as debtors-
9 in-possession under the Bankruptcy Code." I would submit to
10 Your Honor that is fairly broad language that imposes on the
11 purchaser and the debtors as debtors-in-possession. And there
12 is no intent to circumvent or evade the environmental laws. To
13 the extent that New GM is acquiring plants that may have
14 environmental problems, they will be responsible for that. To
15 the extent --

16 THE COURT: Kind of like in Magcorp.

17 MR. MILLER: I'm sorry?

18 THE COURT: Kind of like in Magnesium Corporation of
19 America.

20 MR. MILLER: That's correct, Your Honor. And to the
21 extent that OldCo retains plants that haven't -- I mean, the
22 whole controversy, Your Honor, about the wind-down budget only
23 related to environmental claims. As the analysis of the
24 environmental claims and the potential exposure there went up,
25 the committee, justifiably, said we need more in the wind-down

1 budget to cover environmental claims. So there is no intent --
2 and I would submit to Your Honor the language is sufficiently
3 broad, and if the New York State Attorney General has a problem
4 with it, we'd be happy to work that language out with her.

5 THE COURT: Okay. Continue.

6 MR. MILLER: So Your Honor, we come down to the final
7 aspect, I hope, of this proceeding. The record, Your Honor, I
8 believe is abundantly clear. The business justification has
9 been articulated. Mr. Richman referred to the Lionel case and
10 the various factors in the Lionel case. And in the Lionel
11 case, as Your Honor may recall, the sale was disapproved. It
12 was disapproved and reversed by the Second Circuit because it
13 was being done at the insistence of the creditors' committee
14 who wanted a cash distribution as part of a subsequent plan of
15 reorganization. And the issue was their electronics, the
16 common stock of that partially owned subsidiary. But in the
17 Lionel case, Your Honor, there was no danger of diminution in
18 value. Dale Electronics was an independent company listed on
19 the New York Stock Exchange. The value of that stock was not
20 diminishing. And as it turns out, three years later or two
21 years later it was at the same value.

22 We have a different case, Your Honor. And as pointed
23 out by the Second Circuit in Lionel, the most important factor
24 is the potential diminution in the value of the assets. This
25 record establishes that if this transaction is not approved,

1 the value of the GM assets will deteriorate and may deteriorate
2 at a much more rapid pace than either you or I or Mr. Richman
3 understands. The fact that GM did better than its downside
4 projections in the month of June doesn't establish anything
5 when the month of June was thirty-three percent below the same
6 period in 2008, and a decline of forty-three percent in fleet
7 sales. And then we have Mr. Henderson's testimony, even going
8 forward GM will lose money in 2009. If we don't start -- if
9 the purchaser doesn't start using these assets as part of a new
10 GM, a new, leaner, more competitive, more efficient GM, the
11 downward cycle will be irreversible.

12 So we fit right within Lionel and its progeny. We
13 have -- I will have to call it, Your Honor -- I don't want to
14 call it a melting ice cube because I got criticized for that
15 once before -- a wasting asset. These are assets that will
16 deteriorate in value. And that deterioration will be felt by
17 all of the stakeholders, including the stakeholders that oppose
18 this transaction.

19 The bottom line, Your Honor, is that there is no
20 viable alternative. And that's the kind of situation that
21 Section 363 was enacted for, to deal with a situation where
22 there had to be a relatively quick sale of assets. And
23 fortunately, we've had thirty days to see if there's anybody
24 else in the market for these assets. What we have done, Your
25 Honor, is establish the value of these assets. We've also

1 established that nobody's interested in buying them other than
2 this purchaser.

3 And the fact that it's the government, Your Honor,
4 doesn't detract that it is a purchaser. It's voluntarily doing
5 this, Your Honor. One, to protect the taxpayer's monies in the
6 hope that it will recover a portion of the taxpayer's monies.
7 And two, to try and salvage an industry. But there are limits
8 to that, Your Honor, and the government has clearly said what
9 the limits are.

10 So we are in a situation where we can do this
11 transaction, we can create a new GM. Yes, we're going to use
12 the same name, but we're only going to have four brands, Your
13 Honor. We're going to have Cadillac, Chevrolet, Buick, and
14 GMC. A leaner, more competitive GM that will benefit the
15 domestic industry, that will provide more value to the economic
16 stakeholders than any other alternative that has been
17 proffered, and no alternative, unfortunately, Your Honor, has
18 been proffered to date.

19 So on behalf of the debtors, Your Honor, we submit
20 that this case fits squarely within the four corners of 363(b).
21 There has been an articulated business reason for this sale.
22 It is reasonable business judgment. The board of directors of
23 GM discharged their fiduciary obligations in considering the
24 alternatives and going forward with this Section 363 sale. And
25 the purchaser, the government-sponsored entity, has acted in

1 good faith in negotiating this transaction, as demonstrated by
2 the negotiations that have gone on to this very hour. There
3 has been no bad faith as Mr. Parker alleges.

4 To allow these assets to go through a process of
5 liquidation would be horrific, Your Honor, a situation that
6 Your Honor should not allow. And Your Honor should approve
7 this transaction. Thank you.

8 THE COURT: All right. Thank you. All right.
9 Ladies and gentlemen, this hearing is now closed. We're going
10 to take a lunch break for an hour, and then if you have any
11 deals to announce to me or any housekeeping matters, I'll hear
12 them an hour from now. However, there will be no further
13 argument on today. If it turns out that there are no
14 additional deals to announce or understandings to confirm, it
15 will be very short an hour from now. The purpose of this,
16 among other things, is to give you a chance to talk to folks to
17 ascertain whether or not you need or want to put anything on
18 the record. And there may be other people similarly situated.
19 I also will need to talk to at least one person of medium or
20 higher level seniority from each constituency to discuss
21 getting the transcript and exhibits to make sure that I have a
22 full set and the like. This matter is taken under submission
23 and at this point we're in recess. Thank you.

24 (Recess from 1:42 p.m. until 2:54 p.m.)

25 THE COURT: Okay, folks, I need to get to work. And

1 we said that we would set aside some time for you folks to put
2 deals on the record and deal with housekeeping matters, and I
3 have one or two of my own.

4 Mr. Karotkin or Ms. Cordry, who would like to take
5 the lead on taking care of some of those things?

6 MR. KAROTKIN: Your Honor, I believe we have reached
7 an understanding with Ms. Cordry as to the proposed terms and
8 provisions of a proposed order to address the concerns she has
9 raised.

10 THE COURT: Okay.

11 MR. KAROTKIN: Is that correct?

12 MS. CORDY: Yes.

13 MR. KAROTKIN: Okay. And the one -- so I think that
14 addresses those issues. If I might, Your Honor, the Attorney
15 General from the State of Texas would like to leave to catch a
16 plane.

17 THE COURT: Sure.

18 MR. KAROTKIN: So I --

19 THE COURT: Would you like to say something before
20 you have to go?

21 MR. KAROTKIN: He had asked me if I would read into
22 the record --

23 THE COURT: Oh, okay.

24 MR. KAROTKIN: -- three paragraphs which would
25 address his concerns as well.

1 THE COURT: All right.

2 MR. KAROTKIN: These would be three paragraphs that
3 would be inserted into the proposed order:

4 "Entry by GM into the Participation Agreements with
5 Accepting Dealers is hereby approved, and that the offer by GM
6 and entry into the Participation Agreements was appropriate and
7 not the product of coercion. The Court makes no finding as to
8 whether any specific provision of any participation agreement
9 governing the obligations of Purchaser and its Dealers is
10 enforceable under applicable provisions of state law. Any
11 disputes that may arise under the Participation Agreements
12 shall be adjudicated on a case-by-case basis in an appropriate
13 forum other than this court."

14 THE COURT: Mr. Roy, did he get it right?

15 MR. ROY: He got the first paragraph right, Your
16 Honor.

17 THE COURT: Still didn't express your last
18 implication there?

19 MR. KAROTKIN: This is very stressful for me, Your
20 Honor.

21 THE COURT: Okay.

22 MR. KAROTKIN: The next paragraph would be, "Nothing
23 contained in the preceding two paragraphs shall impact the
24 authority of any state to regulate Purchaser subsequent to the
25 closing."

1 And the final paragraph is as follows: "This Court
2 retains exclusive jurisdiction to enforce and implement the
3 terms and provisions of this order, the MPA, all amendments
4 thereto, any waivers and consents thereunder, and each of the
5 agreements executed in connection therewith, including the
6 Deferred Termination Agreements in all respects, including but
7 not limited to retaining jurisdiction to: (a) compel delivery
8 of the Purchased Assets to the Purchaser; (b) compel delivery
9 of the Purchase Price or performance of other obligations owed
10 by or to the Debtors; (c) resolve any disputes arising under or
11 related to the MPA, except as otherwise provided therein; (d)
12 interpret, implement and enforce the provisions of this order;
13 (e) protect the Purchaser against any of the retained
14 liabilities or the assertion of any lien, claim, encumbrance or
15 other interest of any kind or nature whatsoever against the
16 Purchased Assets; and (f) resolve any disputes with respect to
17 or concerning the Deferred Termination Agreements.

18 "The Court does not retain jurisdiction to hear
19 disputes arising in connection with the application of the
20 Participation Agreements, which disputes shall be adjudicated
21 as necessary under applicable state or federal law in any other
22 court or administrative agency of competent jurisdiction."

23 THE COURT: Okay, I'll try to -- again, Mr. Roy, did
24 he get it right this time?

25 MR. ROY: He got it all right this time, Your Honor.

1 THE COURT: Okay. Fair enough.

2 MR. KAROTKIN: I believe, with that, this gentleman
3 is prepared to withdraw the --

4 MR. ROY: Yeah, Your Honor, with the agreement that
5 that language is going to be in the order that the debtors
6 submit as a proposed sale order, and with the understanding
7 that there's no objection from any other party, including
8 Treasury, the State of Texas is prepared to withdraw its
9 objection.

10 THE COURT: Okay, Mr. Schwartz?

11 MR. SCHWARTZ: That's correct, there's no objection.
12 We had a small tweak to add the federal government's ability to
13 continue to regulate the purchaser. I'm not sure if these
14 folks have signed off on it.

15 THE COURT: In other words, you're proposing that
16 there be an even more regulatory environment than what Mr. Roy
17 was asking for?

18 MR. SCHWARTZ: Exactly right.

19 MR. ROY: So I'm getting more than I asked for.

20 THE COURT: It sounds to me like you wouldn't care if
21 they got that, Mr. Roy.

22 MR. ROY: No, not at all. This -- I believe that
23 this protects the state's ability to enforce its regulatory
24 scheme.

25 THE COURT: Okay. Well, fair enough. I assume that

1 takes care of your needs and concerns then, Mr. Roy?

2 MR. ROY: It does, Your Honor.

3 THE COURT: Have a good flight.

4 MR. ROY: Thank you so much.

5 THE COURT: Thank you.

6 MR. ROY: It's been a privilege.

7 THE COURT: Thank you.

8 Ms. Cordry?

9 MS. CORDY: Having come here and sat here through the
10 last couple of days, I did want to indicate for the record the
11 basis on which the states were finding a resolution of their
12 objection. And I will be very brief, but I do want to, sort
13 of, lay out what is in here and what the basis was for pulling
14 what we had filed.

15 Certainly this is an extraordinary case; I think
16 everyone agrees on that. On the other hand, in some ways it's
17 also like every other Chapter 11 case in that it has to follow
18 the Bankruptcy Code. The Supreme Court has told us that the
19 uniformity clause sets aside bankruptcy from every other
20 portion of Congress's powers. So it's for those reasons that
21 the states initially analyzed this case under their view of
22 what the Bankruptcy Code says without a special exception for
23 the mega auto bankruptcy problems.

24 We had a number of problems with the order with
25 respect to clarity in a number of respects, with taxes,

1 environmental law, other provisions. We had concerns with the
2 substance of the terms in terms of what was being assumed, what
3 was not being assumed. The treatment of these dealer
4 agreements was a major issue for the states, and I'll get to
5 that in just a moment, and then some of the terms of the order
6 in terms of the way it was phrased about successor liability,
7 which was some of the questions I asked yesterday.

8 We have worked very hard since the beginning of the
9 case with debtors' counsel initially, with Treasury counsel,
10 almost everybody in this room at some point or another, it
11 feels like. And I think a great number of improvements have
12 been made in this agreement over that time period. The first
13 was the assumption of the future product liability claims.
14 Obviously, we -- you know, in a perfect world, we would not be
15 distinguishing between those two categories, but certainly
16 that's better than none of them. And it certainly goes a ways
17 to addressing issues that were raised by the state Attorney
18 Generals. And by the way, I am speaking strictly on behalf of
19 the forty-five-Attorney-General-objection that's there.

20 With respect to the dealers, you heard yesterday, one
21 set of dealers talked to you about the process of being
22 required to sign on to those. And there was a statement that
23 while 99.6 percent of the people signed it, so it must have
24 been a great deal. I -- as a matter of reality, I think most
25 things that you get 99.6 percent of people signing on are

1 probably not the greatest deal in the world; they're just
2 better than something really awful. But we're leaving aside
3 that concern.

4 There was a second concern that the ongoing terms of
5 those agreements that we were being asked to sign had
6 provisions that could be substantively unlawful under state
7 law. And we do not understand that anything that is said with
8 respect to rejection can carry over to the notion of saying
9 that if you assume a contract you can thereby assume some terms
10 that violate state law on a going-forward basis, any more than
11 if someone could make you sign a contract that said I'll take
12 less than the minimum wage and then assume that contract and
13 make you take less than the minimum wage.

14 So that was a concern on the dealer agreements. And
15 what you just heard read into the record dealt with that by
16 leaving us free to -- and the jurisdictional piece as well,
17 taking the jurisdiction to enforce ongoing agreements between
18 nondebtor parties, post-closing, that could not affect the
19 estate in trying to leave them in this bankruptcy court's
20 jurisdiction.

21 THE COURT: Let me interrupt you --

22 MS. CORDY: Sure.

23 THE COURT: -- for a second, Ms. Cordry. When Mr.
24 Roy was standing up next to Mr. Karotkin, they were talking
25 about the things in the context of resolving Mr. Roy's

1 objections. That was -- he was standing there and you weren't,
2 but that was part of a dialogue to which you were also a part.

3 MS. CORDY: Right. Yes, and that is part of the
4 overall package that is here. He spoke to it simply because he
5 had the separate objection on it. But, yes, that is one of the
6 pieces that went into this overall deal here.

7 So we were very concerned about that treatment of
8 assumed contracts, and that agreement works on that part. We
9 also wanted to be sure that lemon laws were covered under the
10 notion of warranty claims, but they did not specifically refer
11 to state lemon laws, and that coverage is being picked up.

12 Privacy, we had no idea what they were going to do
13 with privacy. We've read the consumer privacy ombudsman's
14 report. We couldn't talk to them directly, but we did try to
15 give some input. And what I've seen from his report appears to
16 be constructive and useful. And there is some language in the
17 agreement right now that was drafted without seeing his report.
18 It's pretty much consistent with what the report recommends,
19 perhaps not completely consistent. That's, I think, up to Your
20 Honor to decide with the debtor what they'll require for that.
21 We had signed off on the other language before we saw what the
22 consumer privacy ombudsman said.

23 On taxes, we clarified that the taxes in the first-
24 day order are all being assumed by the purchaser. We clarified
25 a number of other pieces of language; some of them are in with

1 the environmental piece.

2 THE COURT: Time out, Ms. Cordry.

3 MS. CORDY: Yes.

4 THE COURT: I thought I authorized taxes to be paid
5 under the first-day order.

6 MS. CORDY: Yes.

7 THE COURT: Your point being that, to the extent they
8 haven't been paid, they'll be assumed?

9 MS. CORDY: Well, that the -- the assumption was
10 clarified, which was somewhat unclear in the order, that the
11 provision for assumption of taxes is congruent with the kind of
12 taxes that were covered by the first-day order so that if they
13 are the kind of taxes that were being picked up under the
14 first-day order, they will be the kind of taxes that will be
15 assumed, either that there -- there may be some that have just
16 not been paid yet or a dispute or an audit, an ongoing
17 assessment, any of those kind --

18 THE COURT: One way or another, they'll get paid --

19 MS. CORDY: Right.

20 THE COURT: -- at some point in time?

21 MS. CORDY: Right, and that so they're going to be
22 assumed. And similarly with the environmental liabilities, we
23 clarified that the New GM intends to be fully liable for
24 environmental liabilities of its transferred facility.

25 So all of these were matters that were very important

1 to us.

2 The other piece we talked about, obviously, was the
3 successor liability. And the basic construct we dealt with was
4 this notion that I raised yesterday of what is -- assuming you
5 can sell free and clear of liability on a claim or on
6 something, what is the scope of that? And we came to an
7 agreement that we would limit it to a bankruptcy claim, a 1015
8 claim. So the language on that is all in the agreement.

9 On the TWA issue, I can only say our view remains as
10 to what it is of the proper construction of law. But we also
11 recognize that there's been a little water under the dam and a
12 lot of people have structured deals based on what they believe
13 the law to be, and certainly this case is an example of that.

14 So for all those reasons, after exhaustive, literally
15 of course, negotiations, we have reached agreement with the
16 debtor, with Treasury on the terms of the order that I have
17 recom -- well, when we say "we", mostly me. I've recommended
18 to the AGs; I have talked to the staff, counsel, contacts, the
19 ones I could gather last night at 10:00. We have sent it
20 around. We have made the request to all the Attorneys General
21 to sign off on this, which they started getting that request at
22 about 9:30 this morning. As of now, I've been told there are
23 forty-five -- the final total, I believe, was forty-five
24 Attorney Generals on the brief. At this point I've been told,
25 I think, that the last count of approvals so far is twenty-

1 seven. I'm reasonably optimistic that we will continue to get
2 the rest of them signed on over the course of the day or so.

3 At this point, my view would be I believe that we
4 have an agreement. I don't believe we're going to have dissent
5 that would overturn the agreement, but the last position, I
6 understood, with the debtors and Treasury, was simply that if
7 for any reason we -- if the other fifteen AGs come back and say
8 no, no, over our dead bodies, that we would just say the deal's
9 off, the order goes back to what you were doing before you had
10 the agreement without us, and we'd just stand on our
11 objections. But as of now, we think this agreement is going to
12 hold and we think it is a preferable agreement for the Attorney
13 Generals. We also think it's preferable for all the other
14 parties as well in not having the Attorney Generals seek to
15 overturn this transaction.

16 THE COURT: All right, thank you.

17 Mr. Karotkin?

18 MR. KAROTKIN: Thank you, Your Honor. With respect
19 to Ms. Cordry's colloquy and commentary, I don't know if that
20 was meant to be interpreting what the order said or
21 embellishing what the order said. As far as we are concerned,
22 the agreement we have reached is in the order. And we are not
23 necessarily agreeing that how she described it or how she
24 interpreted it is accurate or inaccurate. It is what it is.

25 THE COURT: If I approved the motion and entered the

1 order in the form as modified, the order would say whatever it
2 says?

3 MR. KAROTKIN: Correct.

4 THE COURT: Okay.

5 MR. KAROTKIN: For example, to the extent she was
6 referring to how environmental laws are being treated under the
7 order, they are being treated as they are being treated.

8 THE COURT: You're saying the order has them in
9 support of sales.

10 MR. KAROTKIN: Exactly, sir.

11 THE COURT: And that what she's saying isn't like a
12 presidential signing statement or --

13 MS. CORDY: I would stipulate to that, Your Honor.
14 If I get to be president, then I'll determine what kind of
15 authority I have at this point. But --

16 THE COURT: Okay.

17 MS. CORDY: -- I was simply attempting to deal with
18 the fact that we did deal with issues regarding environmental
19 laws and made some improvements in that area that I think
20 are --

21 THE COURT: Okay.

22 MS. CORDY: -- hopeful and satisfactory to my
23 clients. Thank you.

24 THE COURT: All right. Fair enough.

25 MR. KAROTKIN: Thank you, sir.

1 THE COURT: To what extent do we have other things
2 that people want to note on the record?

3 Mr. Smolinsky, I see a few people coming up. You
4 want to, kind of, help coordinate that, if you can?

5 MR. SMOLINSKY: Sure, Your Honor. Let me at least
6 try. Your Honor, there are approximately 600 objections
7 related to what I would call contract issues, and they continue
8 to come in. So I thought, to try to head off everyone coming
9 up and making reservation of rights, that I would describe to
10 Your Honor the process that we're undergoing and perhaps that
11 satisfies everyone's concerns, and we could make -- shorten the
12 time here.

13 Your Honor, in connection with the sale, the
14 purchaser has identified over 700,000 contracts for probable
15 assumption and assignment. We've done everything in our power
16 to manage the process focused on three goals: First, to have
17 the ability to update the reconciliation process as new
18 invoices come in from the pre-petition and post-petition
19 period; two, allow the purchaser to continue its due diligence
20 with respect to the contracts; and, finally, to try to not bog
21 down this Court's docket with multiple objections.

22 The company, together with AlixPartners, developed a
23 fully trackable system to allow counterparties to see online
24 their contracts which are scheduled for assumption, as well as
25 backup on how cure amounts are derived.

1 You've heard a little bit about the call center. The
2 call centers set up in Warren, Michigan have been fielding
3 calls, have been proactively reaching out to all parties who
4 have filed objections, and have also handled over 6,600 calls
5 from other parties that are making inquiries as to their
6 supplier agreements.

7 Your Honor, when we filed our initial reply last
8 Friday, we attached to it a schedule of those parties that
9 filed objections with respect to contract disputes. And on
10 Monday when we filed our supplemental brief, we attached a new
11 Schedule J, which had three schedules in it, creatively named
12 J-1, J-2 and J-3.

13 I just want to walk Your Honor through these
14 schedules. And let me just update that, Monday night after we
15 had made further progress on the contracts, we filed a
16 supplemental schedule and I think we made some significant
17 progress. And if Your Honor would allow, I'd like to hand up a
18 copy.

19 THE COURT: Sure.

20 MR. SMOLINSKY: I have taken the liberty of
21 highlighting for you the few changes that have been made since
22 then. Your Honor, if you turn to Schedule J-1, which is about
23 six pages long, that is a schedule of withdrawn objections.
24 Now, just to make clear for the record, that doesn't mean that
25 each and every counterparty on the schedule has agreed that

1 there are no reconciliation issues. Either they've been
2 withdrawn because the reconciliation issues have been resolved,
3 or they signed trade agreements which elected into the
4 alternative dispute resolution to the extent a reasonable
5 resolution can't be obtained simply by talking to the call
6 center and working out their differences. And we've had
7 significant progress there.

8 The only changes I just want to note for the record,
9 on page 1, Cellco Partnership d/b/a Verizon Wireless is going
10 to be moved to J-2; the same for Fiat on page 2. On page 3,
11 Hitachi Cable Indiana, Inc. and Hitachi, Limited will be moved
12 to J-2. Isuzu Motors will be moved to J-2; LMC Phase II to
13 phase (sic) 2. On page 4, Progressive Stamping Company, Inc.
14 moved to J-2. On page 5, Interpublic Group of Companies Inc.
15 to page 2 -- to J-2, as well as Toyota Motor Sales U.S.A. And
16 on the last page, the two Verizon contracts will be moved to
17 J-2.

18 Other than that, Your Honor, we believe that the
19 remaining objections can be marked off calendar.

20 We have provided, in consultation with the creditors'
21 committee, to include in the order that if a contract was
22 withdrawn and then there's still a basis for coming back to the
23 Court, that both parties can do so on no less than fifteen
24 days' notice in case there are any further mistakes or
25 omissions. What we'll propose at the end is to file a final

1 schedule and then to provide Your Honor's chambers with a list
2 by docket number rather than alphabetically so that the matters
3 could be marked off calendar.

4 Your Honor, Schedule J-2 is a schedule of objections
5 that have been limited to cure disputes, and they are subject
6 to adjournment. And we have included in the order a request
7 for a hearing date around the third week of July for Your Honor
8 to carry these objections while we continue to try to resolve
9 them and get them off the Court's docket.

10 We have been having open dialogues with each of these
11 parties; we have delivered documents to them. We have worked
12 with them on finalizing a list of contracts and cure amounts.
13 And we've dealt with a number of them in stipulations, which
14 I'll get to in a moment.

15 So the only changes to Schedule 2 is on page 2.
16 Behr-Hella Thermocontrol has filed a withdrawal, and that could
17 be moved to J-1, along with, on page 3, the Hewlett Packard
18 three objections can be moved to J-1 as well.

19 Your Honor, Schedule J-3 is a schedule which has
20 gotten shorter and shorter, which deals with objections that we
21 have not been able to resolve, some of which we have been now
22 able to resolve, and I just want to walk through a few of them
23 and then we can give the other parties an opportunity to speak
24 today if they still have ongoing objections. To the extent
25 that they don't, I would suggest that we move them to J-2 and

1 adjourn them along with the others as a holding date while we
2 continue to reach out for them.

3 So if you turn to --

4 THE COURT: I sense the way you did it, Mr.
5 Smolinsky, that these deal with something different than cure
6 amounts?

7 MR. SMOLINSKY: It's unclear, Your Honor. We've
8 looked at all of these objections and we believe that most of
9 them, even though they may raise adequate protection --
10 adequate assurance issues, they -- I believe they're all
11 quintessentially cure objections, with the exceptions of the
12 ones that I'm going to walk through.

13 THE COURT: Okay.

14 MR. SMOLINSKY: The first one that I'd like to speak
15 about is Hertz Corporation. Your Honor will recall that Mr.
16 Henderson testified that some of the fleet customers are not
17 purchasing vehicles from General Motors because they have
18 issues, internal issues. Hertz is a prime example. They have
19 securitizations. And if their contracts are not assumed by a
20 certain date, then they have to provide additional collateral
21 into their securitizations, which is an anti-competitive issue
22 for them.

23 So we have entered into discussions with Hertz. We
24 have agreed to assume their contract now with the understanding
25 that they have no objection to the assignment of that contract

1 to New GM upon the sale closing. They acknowledge in the
2 stipulation they're not aware of any cure amounts that are
3 outstanding, and we do not believe that there are any either.
4 We've discussed this with U.S. Treasury, we've discussed this
5 with the committee, and they have no objection.

6 THE COURT: Okay. Continue, please.

7 MR. SMOLINSKY: Okay. Your Honor, the next contract,
8 Kolbenschmidt Pierburg AG, that could now be moved to J-2. LBA
9 Realty Fund -- I think you heard from counsel to LBA this
10 morning.

11 THE COURT: Mr. LeHane?

12 MR. SMOLINSKY: That's correct, Your Honor. And,
13 again, I could put it on the record, but I think you heard the
14 agreement that we intend to assume at closing, to the extent
15 that we finish our amendment discussions, or modification
16 discussions, and the indemnities will follow through with
17 respect to any claims that arise or become known after the
18 closing.

19 Pratt & Miller Engineering & Fabrication can be moved
20 to J-1. They withdrew their objection.

21 Royal Bank of Scotland, these contracts -- there are
22 four contracts that relate to the Lordstown plant. Subject to
23 closing, GM has agreed to assume those contracts and we agreed
24 to work cooperatively with RBS to make sure that we deal with
25 any transfer documents that are necessary and any third-party

1 consents.

2 Last one, Trafasee (ph.) Marketplaces Inc., that
3 could be moved to J-2 as well.

4 So, Your Honor, we did our best in these schedules to
5 reflect the desire and intention of the parties. We're also
6 working with the committee to add language to the order to make
7 it clear as to what the cure resolution process is and to
8 preserve everyone's rights while we work it out.

9 We're not currently intending to bar any reasonable
10 late objections. We understand the process was quick.
11 We're -- ultimately our goal is to try to reconcile all the
12 claims to the satisfaction of all parties. Of course, if
13 there's an unreasonable delay, then we'll bring it to Your
14 Honor.

15 We intend to send notice; we propose in our order
16 within two business days of the entry of the order. We would
17 send out notice to each of the parties in here notifying them
18 of the adjourn date for their objection or, if their objection
19 has been withdrawn, notifying them as to why it was withdrawn
20 and giving them the opportunity to come back and explain if
21 there was an error.

22 Turning to stipulations -- and many of these
23 stipulations, I don't believe, require the signature of Your
24 Honor; we're simply to going to file them -- we have received
25 the stipulation from approximately 115 suppliers who have

1 agreed to withdraw their objection and to appear on Schedule
2 J-1 and defer into the alternative dispute resolution process
3 so that we don't have to deal with them further in the
4 bankruptcy process.

5 We have some additional stipulations, one with
6 International Automotive Components Group, one with Dell and
7 one with Timken that likewise withdraw their objection, but
8 they have not agreed to the ADR process. They have agreed to
9 work with us to try to reconcile, and if they can't reconcile
10 then we would use the procedure that I explained before that on
11 fifteen days' notice we can come back to Your Honor and
12 litigate the objection.

13 Your Honor, like Hertz, Avis is another fleet
14 customer. They're having a similar issue, but they don't have
15 the same timing issues that Hertz has. So they've entered into
16 a stipulation, again, acknowledging that they're not aware of
17 any cure amounts under the agreements. But we have agreed to
18 assume and assign those contracts upon the closing. So, unlike
19 Hertz, which happens immediately, the Avis will happen upon the
20 sale. Again, we shared that stipulation with the committee and
21 the Treasury and they have no problem.

22 Cigna, Your Honor, I think, we talked about earlier.
23 We continue to work with Cigna to try to get their comfort
24 level up on the assignment of those employee benefit-related
25 contracts. And, again, we wouldn't expect to be back before

1 Your Honor unless there's a problem in assigning those
2 contracts.

3 Equipment lessors. I just want to put on the record
4 that Manufacturers and Traders Company, as well as Wells Fargo
5 Bank, have equipment leases with the company. They've filed
6 objections. There are additional indentured trustees related
7 to those that have objections. And we've agreed to put on the
8 record that all those contracts are still in the undetermined
9 bucket, meaning that they haven't been noticed out for
10 assumption and assignment. Everyone reserves their rights. We
11 reserve the right to assume and assign those contracts. They
12 reserve the right to object. And we're going to work with them
13 over the next week to enter into an adequate protection
14 stipulation with respect to the use of that equipment as we go
15 through the transition of closing the sale. So we'll be back
16 before Your Honor on that.

17 Your Honor, I think that's the end. Of course,
18 people may want to make statements, and I'm happy to come back
19 and explain any clarifications that are necessary.

20 THE COURT: Okay.

21 People can now come on up, and those who I sent back
22 can now come up again.

23 Go ahead.

24 MR. BACON: Good afternoon, Your Honor. Doug Bacon
25 with Latham & Watkins for GE Capital. We spoke at the end of

1 yesterday's hearing and this morning and tendered a proposed
2 stipulation and order that has been underway for about the last
3 five days, about twenty hours a day. And Mr. Weiss, who had to
4 depart but left his colleague here and his special counsel to
5 the debtor, we have been successful in getting the creditors'
6 committee's support, or lack of objection.

7 Mr. Mayer -- this is the stipulation that Mr. Mayer
8 confirmed that indeed they're fine with and Treasury's counsel
9 is not opposed to. And we -- this bears the signature of the
10 debtors' special counsel and me as counsel for GE. Mr. Weiss
11 explained it to some degree earlier. We can certainly go into
12 more detail. There's a great deal of money involved and
13 hundreds of millions of dollars' worth of equipment, which is
14 why both sides have put a lot of energy into this.

15 We tendered this earlier today, Your Honor. And
16 since then, the only change that has been made is to change the
17 name of the purchaser. And I'm hoping Your Honor, under the
18 circumstances, will just indulge us in interlineation.

19 THE COURT: I would if it weren't for the fact that
20 it has to be electronically entered. I guess it can be
21 scanned. Otherwise, if I could ask somebody to -- do you have
22 a floppy disk with the underlying document?

23 MR. BACON: I can arrange to have that down here this
24 afternoon, Your Honor.

25 THE COURT: Can you have it e-mailed to my chambers?

1 MR. BACON: Easily, Your Honor.

2 THE COURT: Okay. My law clerk can help you as to
3 how to do that. And I'm glad -- it's just as well that a new
4 one's coming, Mr. Bacon, because I think you did hand me up
5 something, or did you?

6 UNIDENTIFIED SPEAKER: Yes.

7 MR. BACON: We did.

8 THE COURT: I don't know if you saw how much paper
9 was on this thing just --

10 MR. BACON: I understand, Judge.

11 THE COURT: So e-mail it when it's finalized to the
12 Gerber chambers. Charlie will give you the exact e-mail
13 address. And on the transmission for the e-mail, note that
14 this is the one that Gerber said that he would enter today.
15 And we'll take care of it today.

16 MR. BACON: Thank you, Judge. Thank you very much.
17 May I approach Charlie?

18 THE COURT: Yes.

19 MR. BACON: Thank you.

20 THE COURT: Who's on deck?

21 MR. DUETCHE: I think I am, Your Honor.

22 THE COURT: Sure. Come on up, please.

23 MR. DEUTSCHE: Good afternoon, Your Honor. Benjamin
24 Deutsche, Schnader Harrison Segal & Lewis on behalf of New
25 United Motor Manufacturing Corp., commonly referred to as

1 NUMMI. NUMMI is a joint venture between Toyota and GM. We
2 had -- we received a notice to assume and assign. Based on the
3 notice and based on the Web site, we simply can't tell what
4 contracts GM is talking about. We're trying to work it out. I
5 believe -- I thought -- I spoke to Mr. Smolinsky earlier. I
6 thought we were going to have a stipulation, basically push
7 this over, give the parties a chance to figure out which
8 contracts they're talking about and then mark this down for
9 something later in July.

10 THE COURT: I think Mr. Smolinsky's being pulled in
11 more than one direction at the same time.

12 MR. SMOLINSKY: Your Honor, I believe we've been
13 having communications with Foley & Lardner, who are
14 representing Toyota in this matter. And we've agreed that
15 we're going to work together to resolve all these contracts.

16 MR. DEUTSCHE: Yeah -- I represent NUMMI and,
17 obviously, my clients instructed us to get resolution. I don't
18 represent Toyota --

19 THE COURT: Who does Foley represent?

20 MR. DEUTSCHE: I believe the Toyota part of NUMMI.

21 THE COURT: And who are the agreements with?

22 MR. DEUTSCHE: I believe with NUMMI. But, yeah, I'm
23 sure they're contracts --

24 MR. SMOLINSKY: We'd be happy to involve them in the
25 discussions.

1 THE COURT: Yeah, why don't you just turn it into a
2 three-way conversation so nobody's toes get stepped on.

3 MR. SMOLINSKY: Certainly makes sense, Your Honor.

4 THE COURT: Okay.

5 MR. DEUTSCHE: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. QUIGLEY: Good afternoon, Your Honor. Sean
8 Quigley from Lowenstein Sandler on behalf of Group 1 Automotive
9 Inc., a company owning approximately seven dealerships in
10 Texas. Your Honor, we filed a limited cure objection.
11 Subsequently, however, we recently learned from the debtors
12 that the Group 1 dealers were sent either participation
13 agreements or wind-down agreements. Certainly, we don't object
14 to the sale, Your Honor, but --

15 THE COURT: Some have one type and some got the
16 other?

17 MR. QUIGLEY: Correct, Judge. Certainly, we don't
18 object to the sale, but to the extent there are any cure
19 amounts or other payments due under these agreements, we simply
20 want to reserve our rights.

21 THE COURT: Okay.

22 Would it help, folks, if I said that, unless there's
23 some reason why I shouldn't, Mr. Smolinsky or Mr. Schwartz,
24 that everybody who wants a reservation of rights on this stuff
25 can have it? Or is it more complicated than that?

1 Got an affirmative nod from the government.

2 Mr. Smolinsky, that's okay with you too?

3 MR. SMOLINSKY: We have no problem, Your Honor.

4 THE COURT: Okay, good. So anybody who wants to just
5 take a reservation of rights doesn't have to, unless they want
6 to. You certainly have one, Mr. Quigley.

7 MR. QUIGLEY: Thank you, Judge.

8 THE COURT: Mr. Sullivan?

9 MR. SULLIVAN: Thank you, Your Honor. James Sullivan
10 of Arent Fox, counsel for the Timken Company and Superior
11 Industries International Inc. Two things, Your Honor. First,
12 I had some communications with counsel for the debtor. We were
13 able to get the debtor to agree to some language added to the
14 sale order, and that's the reason why I didn't come up and
15 actually argue anything. Assuming that the language of the
16 sale order remains as has been represented to us, we would not
17 be pursuing any objection. I just wanted to reserve our right
18 to perhaps send -- or comment on the form of order that is
19 finally submitted to Your Honor.

20 THE COURT: That's a big problem, Mr. Sullivan. You
21 better get your comments in on the form of the order before the
22 proposed form of order is sent to me, because I can't have
23 hundreds of parties waiting for somebody to comment on the form
24 of the order.

25 MR. SULLIVAN: Your Honor, as far as I know, I think

1 the changes have already been included, although I've not been
2 able -- counsel for the debtor has not been willing to
3 circulate the current form of order to all the parties.

4 THE COURT: I would agree upon the language, Mr.
5 Sullivan, but I think I made my position on that clear.

6 MR. SULLIVAN: Okay, I'll discuss it with counsel for
7 GM.

8 THE COURT: Okay.

9 MR. SULLIVAN: The second thing, I just wanted to
10 correct something. I think Mr. Smolinsky made a comment on the
11 record about the Timken Company, about the ADR procedure. I
12 don't believe that they've opted out of that procedure. I
13 believe that they are in fact -- agreed to that procedure. So
14 I don't think that needs any further comment.

15 MR. SMOLINSKY: Your Honor, I think I said that the 3
16 parties that have not agreed to the ADR are subject to separate
17 stipulations from the 120 that did.

18 THE COURT: Okay. All right. Thank you.

19 Next.

20 MR. BEELER: Good afternoon. Martin Beeler of
21 Covington & Burling, on behalf of Union Pacific.

22 THE COURT: Okay, Mr. Beeler.

23 MR. BEELER: Union Pacific provides rail
24 transportation services to the debtors under various executory
25 contracts. We filed a limited objection to the sale, noncure

1 or adequate assurance-related limited objection, for the
2 avoidance of doubt, simply seeking language in the sale order
3 clarifying the setoff and recoupment rights of nondebtor
4 executory contract parties for nonassumed and assigned
5 contracts, similar to language that was included in the
6 Chrysler order for the same purpose.

7 And our understanding of the MPA is that receivables
8 related to those nonassigned contracts would stay with the
9 debtors and, consequently, setoff and recoupment rights would
10 be unimpaired. In discussion with debtors' counsel and in
11 reviewing the MPA provisions with debtors' counsel, we are
12 confirmed in that understanding and prepared to withdraw the
13 objection.

14 THE COURT: Okay. Pause, please, Mr. Beeler.
15 Mr. Smolinsky?

16 MR. SMOLINSKY: Your Honor, I just wanted to be clear
17 on this. I reviewed the language in the Chrysler order.
18 Frankly, I really didn't understand it but -- on this point,
19 but what the MPA says, and I'm only paraphrasing, is that
20 receivables related to excluded assets, assets which aren't
21 going to NewCo, are excluded assets themselves. And so I asked
22 counsel to simply rely on that language. I didn't want to
23 paraphrase it in the order or change the subject matter of the
24 contract by adding language to the order.

25 But I think that he has reviewed the contract and is

1 now comfortable that the contract protects his client's rights.

2 THE COURT: All right.

3 Anything further, Mr. Beeler?

4 MR. BEELEER: No, that's fair enough.

5 THE COURT: Okay, good.

6 MR. BEELEER: Thank you.

7 THE COURT: Mr. Brozman?

8 MR. BROZMAN: Thank you, Your Honor, and good
9 afternoon. Andrew Brozman, Clifford Chance, for the Royal Bank
10 of Scotland, ABN AMRO and RBS Citizens. Your Honor, the
11 agreement that I think we've arrived at with the debtors
12 involves a structured lease transaction for the supply of
13 energy to the Lordstown, Ohio plant. The record should note
14 the exact contracts that the debtors have agreed to assume and
15 assign, since the Web sites did not correctly list them and I'd
16 like to be clear on that. There is a lease dated July 17, 2003
17 between ICX Corporation, which is an affiliate of RBS Citizens,
18 as assignee of Kensington Capital Corp. and General Motors.
19 There is a tripartite agreement of the same date among
20 Lordstown Energy LLC, ICX, again as assignee of Kensington, and
21 General Motors, together with the two sets of schedules
22 pertinent thereto.

23 We have agreed to the assumption and the assignment.
24 There is no dispute, to my knowledge, raised by the debtor with
25 respect to cure amounts, if any. And the debtors, since this

1 is a structured lease transaction, have agreed with us to grant
2 us further assurances in the filing of safe harbor documents in
3 connection with the transfer of the assets.

4 And I think that accurately states our agreement, and
5 I appreciate Your Honor's time.

6 THE COURT: Okay.

7 Mr. Smolinsky, do you need to be heard on what Mr.
8 Brozman just said?

9 MR. SMOLINSKY: I agree, Your Honor.

10 THE COURT: Okay. Fair enough.

11 Who's next? Ms. Taylor?

12 MS. TAYLOR: Yes. Judge, I just wanted to report
13 back -- Susan Taylor from the Attorney General's Office -- that
14 we accept Your Honor's offer for a reservation of rights. And
15 I want it to be clear that New York's objection had two parts:
16 the part we discussed this morning, and it appears that
17 acceptable language may be being inserted in the final order.
18 But I don't currently have authority from my client to withdraw
19 our objection to that portion.

20 And in addition, in our papers we submitted we have a
21 successor liability -- part of our argument turns on successor
22 liability. That part we didn't argue because it has been very
23 competently argued. And I just wanted to be clear that we are
24 not withdrawing the objection as to that portion either and it
25 is now before the Court.

1 THE COURT: Okay.

2 MS. TAYLOR: Thank you very much.

3 THE COURT: Thank you.

4 Did I take care of everybody?

5 Mr. Bromley?

6 MR. BROMLEY: Your Honor, James Bromley of Cleary
7 Gottlieb on behalf of the UAW. This is not with respect to an
8 objection by any stretch; this is just a cleanup from earlier.
9 I had not realized that when we were submitting our
10 designations with respect to depositions that we also needed to
11 submit marked copies separately to the Court. So I just have
12 them here. We submitted them online before noon, but we have
13 the marked ones here, so I'd like to just hand them up.

14 THE COURT: That's not a problem. You can give them
15 to Charlie.

16 MR. BROMLEY: Thank you very much.

17 THE COURT: I appreciate that.

18 Okay, to what extent do we have anything else, folks?
19 All right, I think -- I thought we were done but I see some
20 folks have now come back into the courtroom.

21 MR. SMOLINSKY: Your Honor, just -- I'm not sure I
22 said it, so I wanted to make clear on the record. There have
23 been a number of objections that have been filed since we filed
24 our last reply. We would propose to just carry those along
25 with all the others until the holding date, July --

1 THE COURT: These are executory contract objections?

2 MR. SMOLINSKY: Cure objections, sorry.

3 THE COURT: Cure? Okay.

4 MR. SMOLINSKY: Thank you.

5 MR. KANZA: Good afternoon, Your Honor. Ken Kansa of
6 Sidley Austin on behalf of the TPC lender group. We have
7 agreed language for the order with the debtors and the
8 purchaser that resolves the TPC lenders' objections. And so on
9 reliance on that language, we withdraw the objection.

10 THE COURT: Okay.

11 Anybody else?

12 Going once. All right, I see no response.

13 MR. SMOLINSKY: Your Honor, we've been working on a
14 term sheet for a resolution of the Michigan workers'
15 compensation issues. I think everyone is agreed in principle.
16 We just revised the term sheet over at Kinko's. And we would
17 just need everyone to sign off, but we think that everyone is
18 in agreement on the terms.

19 MS. PRZEKOP-SHAW: Good afternoon, Your Honor. My
20 name is Susan Przekop-Shaw. I'm an assistant attorney general
21 for the state of Michigan.

22 THE COURT: Forgive me again. You're last name,
23 please?

24 MS. PRZEKOP-SHAW: Przekop-Shaw.

25 THE COURT: Okay.

1 MS. PRZEKOP-SHAW: It's spelled P as in Peter, R-Z-E-
2 K-O-P, hyphen, S-H-A-W. On behalf of -- I'm here on behalf of
3 the Attorney General of Michigan, Mike Cox, who represents the
4 Michigan Workers' Compensation Agency and the Funds
5 Administration. And we were compelled to file an objection in
6 this matter to resolve the issue of New -- NGMCO's ongoing
7 workers' compensation obligations in Michigan. And as promised
8 by NGMCO's counsel yesterday, negotiations were held between
9 the State of Michigan and, in fact, they were pursued by the
10 Treasury in regards to resolving this workers' compensation
11 issue. And these discussions culminated in the terms that were
12 necessary for the Michigan Workers' Compensation Agency
13 director to grant NGMCO self-insured status as an employer in
14 Michigan when it begins its operations.

15 What's left is that there's -- as Mr. Smolinsky
16 indicated, that there's ongoing steps being taken to
17 incorporate those terms into a binding agreement that the
18 appropriate parties, after they are identified, can sign on
19 behalf of NGMCO.

20 The representation was made today that such an
21 agreement will be finalized and signed at the end of today.
22 And on that basis, we feel that that addresses a major concern
23 for Michigan, who really wants to have a seamless transition
24 for GMCO to come into there.

25 There were several other legal issues that were

1 presented based upon the proposed order that was filed.
2 Paragraph 52 on the new one that Ms. Cordry worked with on
3 behalf -- with counsel to culminate in has a paragraph that
4 discusses NGMCO's assumption of these workers' compensation
5 obligations. And we have been advised by Old GM's counsel that
6 they will appropriately amend the master sale and purchase
7 order to reflect that provision.

8 And we also observed that proposed order paragraph
9 41, which was dealing with preventing a state to essentially
10 implement its statutory and regulatory system, that this
11 provision will not apply if there's a stipulation on the record
12 that it will not apply to the circumstances. And here, the
13 Michigan Workers' Compensation Agency --

14 THE COURT: Time out. What do you mean by that, that
15 if there's an individual stip it'll trump the moot stip?

16 MS. PRZEKOP-SHAW: From my understanding of paragraph
17 41, as provided, that effective upon the closing and except as
18 may be otherwise provided by stipulation filed with or
19 announced to the Court with respect to a specific matter, that
20 that provision would -- and the following terms would not
21 apply. And in regards to that provision, Michigan Workers'
22 Compensation Agency and the Funds Administration, in order to
23 operate its regulatory scheme and enforce the self-insured
24 process in Michigan, will need to have that stipulation made on
25 the record, and I understand counsel are prepared to do so

1 today.

2 MR. SMOLINSKY: Your Honor, I think the agreement,
3 with respect to paragraph 41, and just to make sure that we're
4 all clear, is that the stipulation that we're entering into
5 allows the Workers' Compensation Board to do their business, to
6 actually take the permit, the application that's proposed to
7 them, to make sure they have all the documents available and to
8 grant their license and then to regulate New GM going forward.
9 And so the agreement that we reached is that that paragraph
10 will not interfere with the Workers' Compensation Board
11 exercising their regulatory duties.

12 Is that accurate?

13 MS. PRZEKOP-SHAW: In regard -- yes.

14 In that regards, to its ongoing regulatory
15 obligations to meet the Workers' Compensation Agency's -- the
16 acts requirements and the rules that apply to that.

17 THE COURT: Mr. Jones, you heading up?

18 MR. JONES: Yep. Yes, Your Honor. Thank you, Your
19 Honor. I just need to note, the Treasury fully agrees to the
20 agreement as -- with the agreement as described. I just do
21 need to note for everyone that the signatory we need for the
22 actual stipulation may not be available today, although we're
23 trying to get that person. Failing that, we expect the person
24 to sign tomorrow.

25 THE COURT: Okay.

1 MR. JONES: Thank you.

2 THE COURT: All right -- I'm sorry, go ahead.

3 MS. PRZEKOP-SHAW: No, thank you.

4 THE COURT: Thank you.

5 Mr. Schmidt?

6 MR. SCHMIDT: Yes, Your Honor. And I apologize, one
7 point harking back to the TPC matter that you heard a few
8 minutes ago. I just received a note from one of my colleagues
9 that we hadn't seen that language in the order yet, and we'd
10 just like to take a few minutes to look at it.

11 THE COURT: Okay. Can somebody get the creditors'
12 committee the language they need to satisfy themselves?

13 MR. SCHMIDT: Thank you, Your Honor.

14 THE COURT: Sure.

15 All right, what else do we have, folks?

16 Mr. Karotkin?

17 MR. KAROTKIN: Your Honor, I think, as to the sale
18 motion, there is nothing else, unless I'm mistaken.

19 THE COURT: I have one or two things. I'm not going
20 to prejudge the motion. But I gather you have been, and may
21 even now still be, doing a lot of work on the order that you
22 would want me to enter, if I approved it, which, among other
23 things, requires you to implement a lot of understandings that
24 you have been working on even up to this minute. Am I correct
25 in assuming that there is going to be a revised proposed order

1 that's going to be sent to my chambers sometime when you've
2 been able to embody all of your deals, Mr. --

3 MR. KAROTKIN: Yes, sir.

4 THE COURT: Do you have some sense as to how long
5 it's going to take you to -- believe me, you don't have to
6 worry about it not getting here in time if it's going to take
7 more than twenty-four hours, but -- or even more, but what's
8 your sense as to how long it's going to take you to embody all
9 of your stuff so that something comes to me?

10 MR. KAROTKIN: I think, actually, we've made a lot of
11 progress. It's our intention to go back tonight, revise it,
12 circulate it to the parties this evening and hopefully get
13 their comments tomorrow morning, and hopefully get it to you
14 either sometime tomorrow night or Saturday, if that's fine with
15 you.

16 THE COURT: Yeah, that'll be fine.

17 Now, to what extent do parties have transcripts --
18 paper transcripts of the last three days?

19 MR. KAROTKIN: Excuse me, sir.

20 (Pause)

21 MR. KAROTKIN: We only have June 30 in the afternoon.
22 There was the problem in the morning with the microphones. We
23 don't have the other two days, but we're arranging to get those
24 as soon as possible.

25 THE COURT: Those have been ordered?

1 MR. KAROTKIN: Yes.

2 Have they been ordered?

3 Yes.

4 THE COURT: On expedited --

5 MR. KAROTKIN: Yes, sir.

6 THE COURT: -- request? Okay. As soon as you or any
7 of your colleagues -- by that I mean the Treasury, creditors'
8 committee, other parties-in-interest, anybody gets them, I
9 would like to have them e-mailed to the chambers e-mail
10 address.

11 MR. KAROTKIN: Yes, sir.

12 THE COURT: All right. I think that takes care of
13 the housekeeping matters I had, Mr. Karotkin. Do you have
14 other stuff?

15 MR. KAROTKIN: There are two other items on the
16 calendar for this afternoon.

17 THE COURT: Go ahead.

18 MR. KAROTKIN: I believe the first item, Your Honor,
19 relates to a motion by the debtors seeking authority and
20 approval of certain settlement with four different unions.
21 This was noticed on shortened time pursuant to an order of your
22 court.

23 This motion, Your Honor, involves a settlement with
24 four of what, over the last few days, you've come to know as
25 the splinter unions. They --

1 THE COURT: These are both non-UAW and --

2 MR. KAROTKIN: Non-I --

3 THE COURT: -- nonobjecting unions, or at least for
4 not presently objecting unions, not the IUE steelworkers, and I
5 forgot the third.

6 MR. KAROTKIN: Correct. That's correct. They
7 encompass about 1,050 retirees and 150 active employees. There
8 are four different settlement agreements annexed to the motion,
9 each of which is substantially identical. And they basically
10 provide, Your Honor, that the unions, as the 1114
11 representative of the covered groups, as defined in the
12 settlement agreements, have agreed to the retiree -- the
13 modified retiree benefits that, again, you heard about over the
14 last few days, of the same nature that were offered to salaried
15 employees and the same that were offered to the objecting
16 parties as well.

17 But these four unions have agreed to that. Two of
18 the unions have -- that have the active employees have also --
19 the debtor has also agreed to modify collective bargaining
20 agreements with those two unions. And all of this is
21 conditioned on approval and consummation of the sale.

22 And, again, like the UAW, in connection with each of
23 these agreements, they've agreed to waive their claims for the
24 retiree health and life benefits as against the debtor company.

25 THE COURT: Okay.

1 Any desire from the creditors' committee to be heard
2 on this?

3 All right.

4 MR. KAROTKIN: Now, if I --

5 THE COURT: Normally -- I think the deadline for
6 objections has passed, but considering the short notice, is
7 there anybody who wants to be heard in the way of objection to
8 that settlement?

9 Record will reflect no response.

10 MR. KAROTKIN: If I could interrupt for one second?

11 THE COURT: Yes.

12 MR. KAROTKIN: I'm sorry. If Your Honor's inclined
13 to grant the relief in the motion, I would suggest that -- we
14 don't have a proposed form of order with us. It was -- the
15 form that we had was incorrect in a few respects, and we
16 haven't had time to change it. My suggestion is if we could
17 send it down to chambers over the next day or so.

18 THE COURT: I'm going to approve the motion, and your
19 mechanics are okay with me, Mr. Karotkin. When you do that, I
20 want your -- either your letter transmittal or your e-mail
21 message accompanying any attached proposed order to be able to
22 give me a representation of counsel for all of the objected
23 unions and the creditors' committee and the U.S. government are
24 satisfied with the form of the order as consistent with
25 reflecting the deal as everybody understands it to be.

1 MR. KAROTKIN: Very well, sir.

2 THE COURT: Okay. Thank you.

3 What else do we have?

4 MR. KAROTKIN: The other item on the calendar is the
5 approval of the wind-down facility. Now, I think that, based
6 on the current state of play and all the negotiations that,
7 again, you heard about earlier today with respect to that
8 facility, I think the current state we're in right now is that
9 the document is still in somewhat of a state of flux, although
10 there is an agreement in principle as to the terms and
11 provisions of the wind-down facility. Of course, the amount of
12 the wind-down facility, as Your Honor heard this morning, would
13 be 1.175 billion dollars.

14 I think all of the substantive terms have been agreed
15 to. The document has not yet been finalized. We do have a
16 proposed order that we will be in a position to submit later
17 today or early tomorrow, which, as I understand it -- the terms
18 of which have been substantially agreed to by both the debtors,
19 the U.S. Treasury, the creditors' committee and the Paul Weiss
20 firm representing the ad hoc committee of bondholders.

21 I don't -- there was some suggestion, Your Honor,
22 that if we could take a short recess, perhaps we might even
23 have a form of document down here. But --

24 THE COURT: That's not necessarily a problem, but
25 before we get that far, I want to give Treasury and especially

1 the creditors' committee a chance to be heard if either of them
2 wants to be.

3 Ms. Caton?

4 MS. CATON: Good afternoon, Your Honor. Amy Caton
5 from Kramer Levin Naftalis & Frankel, on behalf of the
6 creditors' committee. The wind-down credit facility has been
7 a -- the product of a lot of negotiation by the creditors'
8 committee. This is a very important document to us because
9 it's going to govern how these estates run after the sale
10 closes.

11 I believe we are satisfied largely with the
12 resolution on the credit facility and the loan that Treasury is
13 making. And there are a few nits that we still had to the
14 credit agreement, but I think those will be worked out.

15 The one substantive comment that we have to the form
16 of order that we're still trying to work out is corporate
17 governance and how Old GM will be governed after the sale
18 closes and the board leaves. I believe we have a proposal
19 right now on the table, which is that two -- there will be a
20 five-member board, two members of which will be proposed by the
21 creditors' committee, nominated by the creditors' committee,
22 and basically go through the same board approval.

23 THE COURT: Time out, Ms. Caton.

24 MS. CATON: Yes.

25 THE COURT: Is this an evolution since what I heard

1 this morning on that? I thought I heard of a three-person
2 board, and now it sounds like it's up to five.

3 MS. CATON: Yes. Yes, Your Honor, it is.

4 MR. ECKSTEIN: There has been developments --

5 THE COURT: Evolution.

6 MR. ECKSTEIN: There has been evolution. A lot of
7 parties have been put into this issue, and we have been trying
8 to deal with changes as they've been evolving.

9 THE COURT: I understand. Okay.

10 MS. CATON: I apologize. I forgot about the
11 representations that were made this morning.

12 THE COURT: No, that's fine. I am really trying to
13 pay attention to what people tell me.

14 MS. CATON: That's good. That proves -- that
15 definitely shows you're paying attention.

16 THE COURT: Is this like the guy who gets credit for
17 having given another litigant an idea, or --

18 MS. CATON: Your Honor, I believe that the proposal
19 on the table is acceptable to the creditors' committee and
20 Weil, but we still need -- and the debtors, but we still need
21 Treasury's acceptance of that, and that's what we're waiting
22 on.

23 With that, I believe that we'll be prepared to have
24 the order entered. And if Your Honor has any questions about
25 the credit facility, we or Weil or anyone is happy to answer

1 them.

2 THE COURT: Well, I understand it in general terms.
3 I'm sure I don't have the detailed understanding that the
4 parties do, but certainly the concepts are fine with me.

5 Okay, anything else from your perspective, Ms. Caton?

6 MS. CATON: No, Your Honor.

7 THE COURT: Okay, Mr. Schwartz or Mr. Jones, either
8 of you want to comment?

9 MR. SCHWARTZ: Not particularly. I think that was an
10 accurate description in that we were comfortable with what was
11 announced this morning. There have since been some proposals
12 that we're working through, as well as the form of the order.

13 THE COURT: All right.

14 Mr. Karotkin, I'm not going anywhere this afternoon,
15 but I'm not sure, from what I heard, whether you're going to
16 have an order that's ready for me anytime that quickly.

17 MR. KAROTKIN: You read my mind. It's kind of like
18 what you say. I suggest, Your Honor, since everyone pretty
19 much has agreed on the substance, that rather than sticking
20 around, we'd just submit an order to Your Honor after we've
21 circulated it.

22 THE COURT: That's agreeable. And the drill is going
23 to be the same. When I get it sent to me, I need a
24 representation from whoever's sending it to me that it's been
25 run past the people who are the principal ones who need to be

1 heard on it; I think that's Treasury and creditors' committee
2 and the estate and Canada.

3 UNIDENTIFIED SPEAKER: Yes, Your Honor.

4 THE COURT: Right.

5 Okay. Mr. Schein, are your folks putting money in
6 this deal too?

7 MR. SCHEIN: Your Honor, Canada is not actually
8 funding this. But since it does change the rights of the
9 existing DIP facility, it's conditioned upon certain provisions
10 allowing the closing to happen. That's why we are concerned.

11 THE COURT: Sure.

12 Okay. Mr. Rosenberg?

13 MR. ROSENBERG: Good afternoon, Your Honor. Andrew
14 Rosenberg, Paul, Weiss, Rifkind, Wharton & Garrison, on behalf
15 of the ad hoc bondholders. I did -- actually, I think I was
16 the second person or so to speak the first day. I didn't
17 intend to be just the last person to speak on the last day, but
18 I guess that's the way -- I just wanted to mention that when
19 Your Honor was mentioning who needed to be served or passed by
20 in terms of the documents, the Paul Weiss firm obviously has
21 also been involved in looking at the sale order and the DIP
22 order and the credit agreement. We just want to make sure also
23 that we're staying in the loop and are going to see all drafts
24 of those documents.

25 THE COURT: By all means.

1 Okay, Mr. Karotkin, I'm going to look to you to focus
2 more than I focused on who needs to look at the paper you send
3 me.

4 MR. KAROTKIN: Yes, sir.

5 THE COURT: And if you can give me a representation
6 both that you've gotten the okays and that you've consulted
7 everybody who has expressed the interest or need to be
8 consulted, that'll be good enough for me.

9 MR. SMOLINSKY: Thank you, sir.

10 THE COURT: Okay.

11 And to what extent do we have anything else?

12 All right, I think we're done.

13 And you can get me your proposed orders by e-mail.
14 I'm going to ask Mr. Pollack, Charlie, to hang around in case
15 anybody needs details of e-mail addresses and things of that
16 sort.

17 We're adjourned. Thank you.

18 MR. SMOLINSKY: Thank you, sir.

19 (Proceedings concluded at 3:57 PM)

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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

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